15735

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 421.

THE GALVESTON, HARRISBURG AND SAN ANTONIO RAILWAY COMPANY AND E. P. HILL AND W. N. SHAW, PLAINTIFFS IN ERROR,

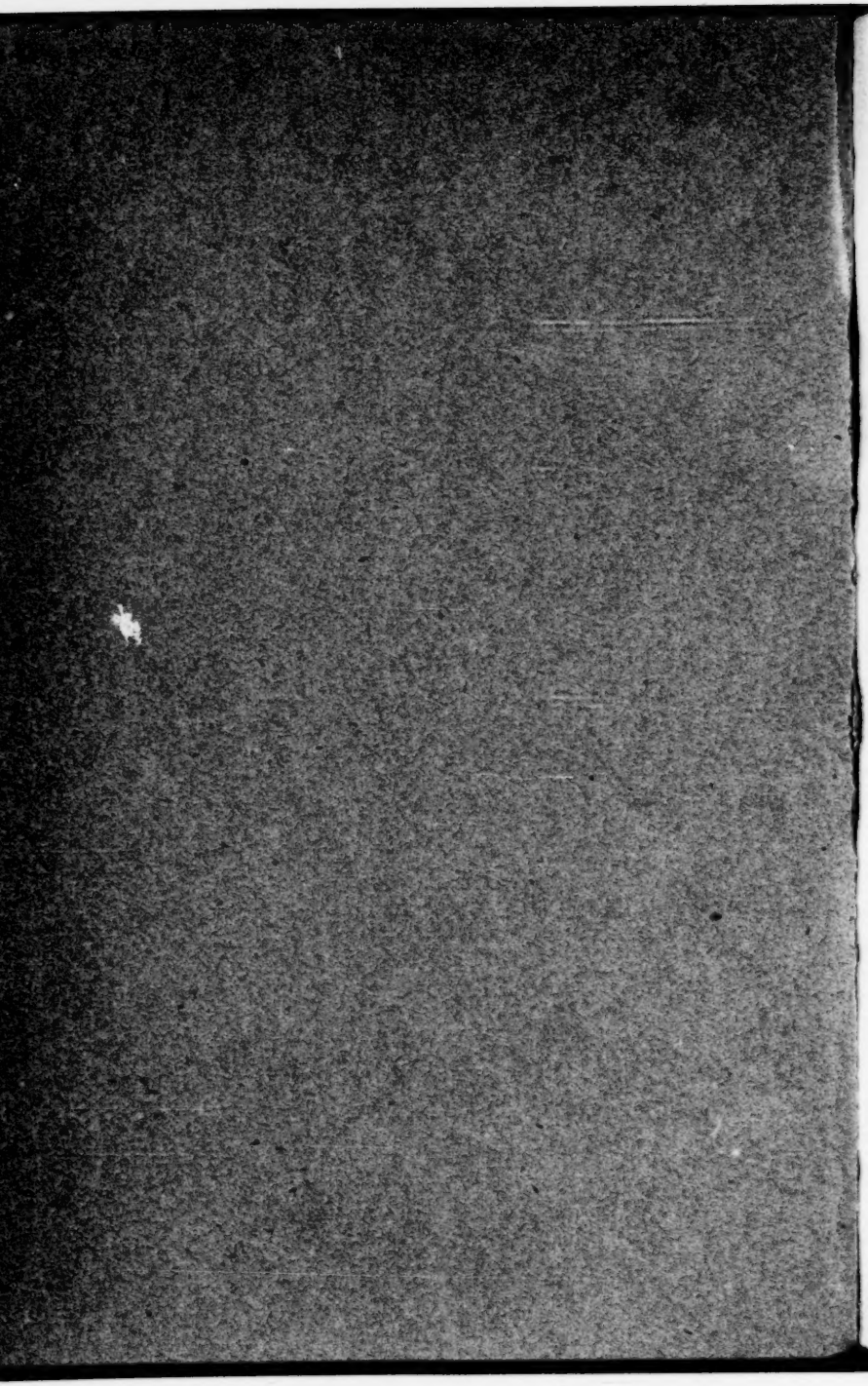
vs.

THE STATE OF TEXAS.

IN ERROR TO THE COURT OF CIVIL APPEALS FOR THE FOURTH SUPREME JUDICIAL DISTRICT OF THE STATE OF TEXAS.

FILED JULY 22, 1897.

(16,634.)



BLEED THROUG

15736

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., AUGUST 2, 1897.

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1 to 3 STATE OF TEXAS,
County of Brewster,

At a term of the district court begun and holden at Alpine, within and for the county of Brewster, before the Hon. Walter Gillis, and ending on the 16th day of September, A. D. 1893, the following case came on for trial, to wit:

THE STATE OF TEXAS, Plaintiff,
vs.
THE GALVESTON, HARRISBURG & SAN ANTONIO RAILWAY COMPANY, Defendant.

Plaintiff's First Amended Original Petition.

In the District Court of Brewster County.

Filed March 13, 1893.

THE STATE OF TEXAS
vs.
THE GALVESTON, HARRISBURG & SAN ANTONIO RAILWAY COMPANY.

To the Honorable Walter Gillis, judge of said court:

Now comes The State of Texas, acting by and through C. A. Culberson, its attorney general, and with leave of the court files this its first amended original petition in lieu of its original petition filed herein on the 5th day of January, 1893, complaining of the Galveston, Harrisburg & San Antonio Railway Company, and respectfully represents and shows to the court:

(1.) The defendant is a railroad corporation regularly chartered and organized under and by virtue of the laws of the State of Texas, and owns and is operating a line of railroad into and through the county of Brewster, in the State of Texas, and has its principal office in the city of Houston, in the county of Harris, in said State, and that John Bagnal is the secretary and V. J. Herder is the treasurer of said company, both of whom reside in the city of Houston, Harris county, Texas, and said company has a local agent in Brew-
4 ster county, to wit, L. McCarthy and G. W. Collie.

(2.) The plaintiff, The State of Texas, is now and was on, to wit, the 1st day of January, 1891, the owner in fee-simple and in possession of the following-described thirteen hundred and eighty-three (1,383) sections, tracts, or parcels of land, containing in the aggregate, to wit, eight hundred and seventy-nine thousand and seventy-eight and one-twentieth (879,078 1/20) acres, situated in the counties of Jeff Davis, Presidio, Brewster, Kimble, San Saba, Val Verde, Crockett, McCulloch, Pecos, Buchel, Reeves, Schleicher, Sutton, and Zavalla, in the State of Texas, and described by the number of certificates, number of acres, date of issuance of certificates, county of location, survey, block and abstract number, and whether and when patented, as follows, to wit, said lands being arranged and described in five exhibits, marked respectively "A," "B," "C," "D," and "E."

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EXHIBIT "A."

Certificates, with sidings included, issued to the Galveston, Harrisburg & San Antonio Railway Company for the section of road beginning at the point of junction with the old line of the Buffalo Bayou, Brazos and Colorado River R. R. at a distance of 493 feet west of the west end of the approach to the bridge over the Colorado river and ending at the west approach to the bridge over the West Navidad river, being 24 miles and 3,029 feet of main track and 6,266 feet of sidings.

Number of certificate.	Acres.	When issued.	Where located.	Unpatented sur. No.	Block.	Abst. No.
1/1	640	Jan'y 9, 1874	Jeff Davis county.....	" 1	1	184
1/2	"	"	Presidio "	" 3	1	99
1/3	"	"	"	" 5	1	100
1/4	"	"	"	" 7	1	101
1/5	"	"	"	" 9	1	102
1/6	"	"	"	" 11	1	103
1/7	"	"	"	" 1	2	104
1/8	"	"	Jeff Davis county.....	" 3	"	185
5						
1/9	"	"	"	" 5	"	186
1/10	"	"	"	" 7	"	187
1/11	"	"	"	" 9	"	188
1/12	"	"	"	" 11	"	189
1/13	"	"	"	" 13	"	190
1/14	"	"	"	" 15	"	191
1/15	"	"	"	" 17	"	192
1/16	"	"	"	" 19	"	193
1/17	"	"	"	" 21	"	194
1/18	"	"	"	" 23	"	195
1/19	"	"	"	" 25	"	196
1/20	"	"	"	" 27	"	197
1/21	"	"	"	" 29	"	198
1/22	"	"	"	" 1	3	261
1/23	"	"	"	" 3	"	262
1/24	"	"	"	" 5	"	263
1/25	"	"	"	" 7	"	264
1/26	"	"	"	" 9	"	265
1/27	"	"	"	" 11	"	266
1/28	"	"	"	" 13	"	267
1/29	"	"	"	" 15	"	268
1/30	"	"	"	" 17	"	269
1/31	"	"	"	" 19	"	270
1/32	"	"	"	" 21	"	271
1/33	"	"	"	" 23	"	272
1/34	"	"	"	" 25	"	273
1/35	"	"	"	" 27	"	274
1/36	"	"	"	" 29	"	275
1/37	"	"	"	" 31	"	276
1/38	"	"	"	" 33	"	277
1/39	"	"	"	" 35	"	278
1/40	"	"	"	" 37	"	279
1/41	"	"	"	" 39	"	280
1/42	"	"	"	" 41	"	281
1/43	"	"	"	" 43	"	282
1/44	"	"	"	" 45	"	283
1/45	"	"	"	" 47	"	284

BLEED THROUGH

6 Certificates, with sidings included, issued to the Galveston, Harrisburg & San Antonio R. R. for the section of road beginning at the point of junction with the old line of the Buffalo Bayou, Brazos & Colorado River R. R. at a distance of 493 feet west of the west end of the approach to the bridge over the Colorado river and ending at the west end of the approach to the bridge over the West Navidad river, being 24 miles and 2,910 feet of main track and 6,266 feet of sidings.

Number of certificate.	Acres.	When issued.	Where located.	Patented.	Unpatented sur. No.	Block.	Abst. No.
1/46	640	Jan. 9, 1874	Jeff Davis county	.....	" 49	3	285
1/47	"	"	"	.....	" 51	"	286
1/48	"	"	"	.....	" 53	"	287
1/116	"	"	"	June 7, 1876	189	3	390
1/117	"	"	"	"	191	"	391
1/118	"	"	"	"	193	"	392
1/119	"	"	"	"	195	"	393
1/120	"	"	"	"	197	"	396
1/122	"	"	"	16,	201	"	396
1/124	"	"	"	"	205	"	398
1/126	"	"	"	15,	209	"	400
1/128	"	"	"	"	213	"	402
1/130	"	"	"	14,	217	"	404
1/132	"	"	"	"	221	"	406
1/134	"	"	"	"	225	"	408
1/140	"	"	"	"	237	"	414
1/141	"	"	"	20,	239	"	415
1/142	"	"	"	"	241	"	416
1/143	"	"	"	"	243	"	417
1/144	"	"	"	19,	245	"	418
1/145	"	"	"	"	247	"	419
1/146	"	"	"	"	249	"	420
1/147	"	"	"	"	251	"	421
1/148	"	"	"	"	253	"	422
1/149	"	"	"	"	255	"	423
1/150	"	"	"	"	257	"	424
1/151	"	"	"	20,	259	"	425
7							
1/152	"	"	"	"			
1/153	"	"	"	"	261	"	426
1/154	"	"	1/10 Jeff Davis.. 9/10 El Paso....	"	263	"	427
1/155	"	"	Presidio.....	"	265	"	428–2648
1/156	"	"	1/4 Jeff Davis... 3/4 El Paso.....	"	267	"	252
1/157	"	"	Jeff Davis.....	"	269	"	429–2649
1/158	"	"	"	"	271	"	430
1/159	"	"	"	"	273	"	431
1/160	"	"	"	"	275	"	432
1/161	"	"	"	June 20, 1876	277	"	433
1/162	"	"	"	.....	" 279	"	434
1/163	"	"	"	.....	" 281	"	435
1/164	"	"	"	.....	" 283	"	436
1/165	"	"	"	.....	" 285	"	437
1/166	"	"	"	.....	" 287	"	438
1/167	"	"	"	.....	" 289	"	439
1/168	"	"	"	.....	" 291	"	181
1/169	"	"	"	.....	" 293	"	182
					" 295	"	183

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Certificates, with sidings included, issued to the Galveston, Harrisburg & San Antonio R. R. for the section of road beginning at the point of junction with the old line of the Buffalo Bayou, Brazos and Colorado River R. R. at a distance of 493 feet west of the west end of the approach to the bridge over the Colorado river and ending at the west end of the west approach to the bridge over the West Navidad river, being 24 miles and 3,910 feet of main track and 6,266 feet of sidings.

Number of certificate.	Acres.	When issued.	Where located.	Unpatented sur. No.	Block.	Abst. No.
1/170	640	Jan'y 9, 1874	Jeff Davis county.....	" 1	4	297
1/171	"	"	"	" 3	"	298
1/172	"	"	"	" 5	"	299
1/173	"	"	"	" 7	"	300
1/174	"	"	"	" 9	"	301
1/175	"	"	"	" 11	"	302
1/176	"	"	"	" 13	"	303
1/177	"	"	"	" 15	"	304
8						
1/178	"	"	"	" 17	"	305
1/179	"	"	"	" 19	"	306
1/180	"	"	"	" 21	"	307
1/181	"	"	"	" 23	"	308
1/182	"	"	"	" 25	"	309
1/183	"	"	" ...	" 27	"	310
1/184	"	"	"	" 29	"	311
1/185	"	"	"	" 31	"	312
1/186	"	"	"	" 33	"	313
1/187	"	"	"	" 35	"	314
1/188	"	"	Presidio.....	" 37	"	285
1/189	"	"	"	" 39	"	286
1/190	"	"	"	" 41	"	287
1/191	"	"	"	" 43	"	288
1/192	"	"	"	" 45	"	289
1/193	"	"	"	" 47	"	290
1/194	"	"	"	" 49	"	291
1/195	"	"	"	" 51	"	292
1/196	"	"	"	" 53	"	293
1/197	"	"	"	" 55	"	294
1/198	"	"	"	" 57	"	295
1/199	"	"	"	" 59	"	296
1/200	"	"	"	" 61	"	297
1/201	"	"	"	" 63	"	298
1/202	"	"	"	" 65	"	299
1/203	"	"	"	" 67	"	300
1/204	"	"	"	" 69	"	301
1/205	"	"	"	" 71	"	302
1/206	"	"	"	" 73	"	303
1/207	"	"	"	" 75	"	304
1/208	"	"	"	" 77	"	305
1/209	"	"	"	" 79	"	306
1/210	"	"	"	" 81	"	307
1/211	"	"	"	" 83	"	308
1/212	"	"	"	" 85	"	309
1/213	"	"	"	" 87	"	310
1/214	"	"	"	" 89	"	311

BLEED THROU

9 Certificates, with siding included, issued to the Galveston, Harrisburg & San Antonio R. R. for the section of road beginning at a point of junction with the old line of the Buffalo Bayou, Brazos & Colorado River R. R. at a distance of 493 feet west of the west end of the approach to the bridge over the Colorado river and ending at the west end of the west approach to the bridge over the West Navidad river, being 24 miles and 3,910 feet of main track and 6,266 feet of sidings.

Number of certificate.	Acres.	When issued.	Where located.	Patented.	Unpatented sur. No.	Block.	Abst. No.
1/215	640	Jan'y 9, 1874	Presidio county	.....	" 91	4	312
1/216	"	"	"	.....	" 93	"	313
1/217	"	"	"	.....	" 95	"	314
1/218	"	"	"	.....	" 97	"	315
1/219	"	"	"	.....	" 99	"	316
1/220	"	"	"	.....	" 101	"	317
1/221	"	"	"	.....	" 103	"	318
1/222	"	"	"	.....	" 105	"	319
1/223	"	"	"	.....	" 107	"	320
1/224	"	"	"	.....	" 109	"	321
1/225	"	"	"	.....	" 111	"	322
1/226	"	"	"	.....	" 113	"	323
1/227	"	"	"	.....	" 115	"	324
1/228	"	"	"	.....	" 117	"	325
1/229	"	"	"	.....	" 119	"	326
1/230	"	"	"	.....	" 121	"	327
1/231	"	"	"	.....	" 123	"	328
1/232	"	"	"	.....	" 125	"	329
1/233	"	"	"	.....	" 127	"	330
1/234	"	"	"	.....	" 129	"	331
1/235	"	"	"	.....	" 131	"	332
1/236	"	"	"	.....	" 133	"	333
1/237	"	"	"	.....	" 135	"	334
1/238	"	"	"	.....	" 137	"	335
1/239	"	"	"	.....	" 139	"	336
1/240	"	"	"	.....	1	5	337
1/241	"	"	"	Jan'y 10, 1890	3	"	338
10							
1/242	"	"	"	"	5	"	339
1/243	"	"	"	"	7	"	340
1/244	"	"	"	"	9	"	341
1/245	"	"	"	"	11	"	342
1/246	"	"	"	"	13	"	343
1/247	"	"	"		" 15	"	344
1/248	"	"	"		" 17	"	345
1/249	"	"	"	Jan'y 10, 1890	19	"	346
1/250	"	"	"	"	21	"	347
1/251	"	"	"	"	23	"	348
1/252	"	"	"	Jan'y 11, 1890	25	"	349
1/253	"	"	"	"	27	"	350
1/254	"	"	"	"	29	"	351
1/255	"	"	"	"	31	"	352
1/256	"	"	"	"	33	"	353
1/257	"	"	"	"	35	"	354
1/258	"	"	"	"	37	"	355
1/259	"	"	"	"	39	"	356

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Certificates, with siding- included, issued to the Galveston, Harrisburg & San Antonio R. R. for the section of road beginning at the point of junction with the old line of the Buffalo Bayou, Brazos & Colorado River R. R. at a distance of 493 feet west of the west end of the approach to the bridge over the Colorado river and ending at the west end of the west approach to the bridge over the West Navidad river, being 24 miles and 3,910 feet of main track and 6,266 feet of sidings.

Number of certificate.	Acres.	When issued.	Where located.	Patented.	Unpatented sur. No.	Block.	Abst. No.
1/260	640	Jan'y 9, 1874	Presidio county	Jan. 11, 1890	41	5	357
1/261	"	"	"	"	43	"	358
1/262	"	"	"	"	45	"	359
1/263	"	"	"	"	47	"	360
1/264	"	"	"	"	49	"	361
1/265	"	"	"	"	51	"	362
11							
1/266	"	"	"	"	53	"	363
1/267	"	"	"	"	55	"	364
1/268	"	"	"	"	57	"	365
1/269	"	"	"	Jan. 3, 1890	59	"	366
1/270	"	"	"	"	61	"	367
1/271	"	"	"	3,	63	"	368
1/272	"	"	"	"	65	"	369
1/273	"	"	"	4,	67	"	370
1/274	"	"	"	"	69	"	371
1/275	"	"	"	"	71	"	372
1/276	"	"	"	"	73	"	373
1/277	"	"	"	"	75	"	374
1/278	"	"	"	"	77	"	375
1/279	"	"	"	"	79	"	376
1/280	"	"	"	"	81	"	377
1/281	"	"	"	"	83	"	378
1/282	"	"	"	"	85	"	379
1/283	"	"	"	"	87	"	380
1/284	"	"	"	6,	89	"	381
1/285	"	"	"	"	91	"	382
1/286	"	"	"	"	93	"	383
1/287	"	"	"	"	95	"	384
1/288	"	"	"	"	97	"	385
1/289	"	"	"	"	99	"	386
1/290	"	"	"	"	101	"	387
1/291	"	"	"	"	103	"	388
1/292	"	"	"	"	105	"	389
1/293	"	"	"	"	107	"	390
1/294	"	"	"	"	109	"	391
1/295	"	"	"	"	111	"	392
1/296	"	"	"	"	113	"	393
1/297	"	"	"	"	115	"	394
1/298	"	"	"	7,	117	"	395
1/299	"	"	"	"	119	"	396
1/320	$250\frac{3}{4}$	"	"	14,	1	7	417
1/321	$638\frac{9}{10}$	"	"	"	3	"	418
1/322	636	"	"	"	5	"	419
1/323	$633\frac{6}{10}$	"	"	"	7	"	420
1/324	$631\frac{2}{10}$	"	"	"	9	"	421

BLEED THROUG

12 Certificates, with sidings included, issued to the Galveston, Harrisburg & San Antonio Railway Co. for the section of road beginning at the point of junction with the old line of the Buffalo Bayou, Brazos and Colorado River R. R. at a distance of 493 feet west of the west end of the approach to the bridge over the Colorado river and ending at the west end of the west approach to the bridge over the West Navidad river, being 24 miles and 3,910 feet of main track and 6,266 feet of sidings.

Number of certificate.	Acres.	When issued.	Where located.	Patented.	Unpatented sur. No.	Block.	Abst. No.
1/325	628 $^{9}/_{10}$	Jan. 9, 1874	Presidio county	Jan'y 14, 1890	11	7	422
1/326	626 $^{6}/_{10}$	"	"	"	13	"	423
1/327	640	"	"	"	15	"	424
1/328	"	"	"	"	17	"	425
1/329	"	"	"	"	19	"	426
1/330	"	"	"	"	21	"	427
1/331	"	"	"	"	23	"	428
1/332	"	"	"	"	25	"	429
1/333	250 $^{1}/_{4}$	"	"	14,	27	"	430
1/334	250 $^{3}/_{4}$	"	"	"	29	"	431
1/335	640	"	"	"	31	"	432
1/336	"	"	"	16,	33	"	433
1/337	"	"	"	17,	35	"	434
1/338	"	"	"	16,	37	"	435
1/339	"	"	"	17,	39	"	436
1/340	"	"	"	14,	41	"	437
1/341	"	"	"	"	43	"	438
1/342	"	"	"	15,	45	"	439
1/343	"	"	"	"	47	"	440
1/344	"	"	"	"	49	"	441
1/345	"	"	"	"	51	"	442
1/346	"	"	"	"	53	"	443
1/347	250 $^{3}/_{4}$	"	"	"	55	"	444
1/348	250 $^{1}/_{4}$	"	"	16,	57	"	445
1/349	640	"	"	16,	59	"	446
1/350	"	"	"	17,	61	"	447
1/351	"	"	"	"	63	"	448
13							
1/352	"	"	"	16,	65	"	449
1/353	"	"	"	"	67	"	450
1/354	"	"	"	"	69	"	451
1/355	"	"	"	"	71	"	452
1/356	"	"	"	"	73	"	453
1/357	"	"	"	"	75	"	454
1/358	"	"	"	"	77	"	455
1/359	"	"	"	"	79	"	456
1/360	"	"	"	"	81	"	457
1/361	403	"	"	11,	83	"	458
1/362	501	"	"	"	85	"	459
1/363	346	"	"	"	87	"	460
1/364	243 $^{1}/_{2}$	"	"	13,	89	"	461
1/365	640	"	"	"	91	"	462
1/366	"	"	"	"	93	"	463
1/367	"	"	"	"	95	"	464
1/368	"	"	"	14,	97	"	465
1/369	"	"	"	"	99	"	466

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Certificates, with sidings included, issued to the Galveston, Harrisburg & San Antonio R. R. Co. for the section of road beginning at the point of junction with the old line of the Buffalo Bayou, Brazos and Colorado River R. R. at a distance of 493 feet west of the west end of the approach of the bridge over the Colorado river and ending at the west end of the west approach to the bridge over the West Navidad river, being 24 miles and 3,910 feet of main track and 6,266 feet of sidings.

Number of certificate.	Acres.	When issued.	Where located.	Patented.	Unpatented sur. No.	Block.	Abst. No.
1/370	640	Jan. 9, 1874	Presidio county	Jan. 14, 1890	101	7	467
1/371	"	"	"	"	103	"	468
1/372	"	"	"	" 7,	105	"	469
1/373	"	"	"	"	107	"	470
1/374	"	"	"	"	109	"	471
1/375	"	"	"	"	111	"	472
14							
1/376	"	"	"	"	113	"	473
1/377	"	"	"	"	115	"	474
1/378	"	"	"	" 8,	117	"	475
1/379	"	"	"	"	119	"	476
1/380	"	"	"	"	121	"	477
1/381	"	"	"	" 10,	123	"	478
1/382	"	"	"	"	125	"	479
1/383	"	"	"	"	127	"	480
1/384	"	"	"	" 11,	129	"	481
1/385	243½	"	"	"	131	"	482
1/386	441 6/10	"	"	"	133	"	483
1/387	446½	"	"	" 10,	1	8	484
1/388	640	"	"	" 17,	3	"	485
1/389	"	"	"	"	5	"	486
1/390	"	"	"	"	7	"	487
1/391	"	"	"	"	9	"	488
1/392	"	"	"	" 18,	11	"	489
1/393	"	"	"	"	13	"	490
1/394	"	"	"	"	15	"	491
1/395	"	"	"	"	17	"	492
1/396	"	"	"	"	19	"	493
1/397	"	"	"	" 29,	21	"	494
1/398	"	"	"	" 12,	23	"	495
1/399	"	"	"	" 30,	25	"	496
1/400	448 6/10	"	"	" 29,	27	"	497
1/401	451	"	"	" 31,	29	"	498
1/402	640	"	"	Feb. 3, 1890	31	"	499
1/403	"	"	"	" 4,	33	"	500
1/404	"	"	"	"	35	"	501
1/405	"	"	"	"	37	"	502
1/406	"	"	"	"	39	"	503
1/407	"	"	"	.....	" 41	"	504
1/408	"	"	"	.....	" 43	"	505
1/409	"	"	"	.....	" 45	"	506
1/410	"	"	"	.....	" 47	"	507
1/411	"	"	"	.....	" 49	"	508
1/412	"	"	"	.....	" 51	"	509
15							
1/413	"	"	"	"	" 53	"	510
1/414	"	"	"	"	" 55	"	511
1/415	"	"	"	"	" 57	"	512

BLEED THROUG

"EXHIBIT B."

Certificate-, with sidings included, issued to the Galveston, Harrisburg & San Antonio R. R. for the section of road beginning at the western sill of the western approach to the bridge over the West Navidad river and ending at the centre of a red sandstone culvert, it being the first one east of Buck branch, being 27 miles and 47 feet of main track and 3,800 feet of sidings.

Number of certificate.	Acres.	When issued.	Where located.	Patented.	Unpatented sur. No.	Block.	Abst. No.	Patentee.
1/416	640	July 17, 1874	Presidio county	Jan. 16, 1890	59	8	513	G. H. & S. A. R. R. Co.
1/417	453 4/10	"	Presidio "	"	61	"	514	"
1/418	274 1/10	"	Presidio "	"	63	"	515	"
1/419	640	"	Presidio "	"	65	"	516	"
1/420	"	"	Presidio "	"	67	"	517	"
1/421	"	"	Presidio "	"	69	"	518	"
1/422	"	"	Presidio "	"	71	"	519	"
1/423	"	"	Presidio "	"	73	"	520	"
1/424	"	"	Presidio "	17,	75	"	521	"
1/425	"	"	Presidio "	"	77	"	522	"
1/426	"	"	Presidio "	"	79	"	523	"
1/427	"	"	Presidio "	"	81	"	524	"
1/428	"	"	Presidio "	16,	83	"	525	"
1/429	"	"	Presidio "	"	85	"	526	"
1/430	"	"	Presidio "	"	87	"	527	"
1/431	"	"	Presidio "	"	89	"	528	"
1/432	"	"	Presidio "	17,	91	"	529	"
1/433	"	"	Presidio "	"	93	"	530	"
1/434	"	"	Presidio "	"	95	"	531	"
1/435	"	"	Presidio "	"	97	"	532	"
1/436	"	"	Presidio "	"	99	"	533	"
1/437	"	"	Presidio "	"	101	"	534	"
1/438	"	"	Presidio "	"	103	"	535	"
1/439	"	"	Presidio "	"	105	"	536	"
16								
1/440	"	"	Presidio "	"	107	"	537	"
1/441	"	"	Presidio "	18,	109	"	538	"
1/442	"	"	Presidio "	"	111	"	539	"
1/443	"	"	Presidio "	"	113	"	540	"
1/444	"	"	Presidio "	"	115	"	541	"
1/445	"	"	Presidio "	"	117	"	542	"
1/446	"	"	Presidio "	"	119	"	543	"
1/447	"	"	Presidio "	"	121	"	544	"
1/448	"	"	Presidio "	"	123	"	545	"
1/449	"	"	Presidio "	"	125	"	546	"
1/450	"	"	Presidio "	"	127	"	547	"
1/451	501	"	Presidio "	"	129	"	548	"
1/452	640	"	Presidio "	"	131	"	549	"
1/453	"	"	Presidio "	"	133	"	550	"
1/454	"	"	Presidio "	"	135	"	551	"
1/455	"	"	Presidio "	"	137	"	552	"
1/456	"	"	Presidio "	20,	139	"	553	"
1/457	"	"	Presidio "	"	141	"	554	"
1/458	280 7/10	"	Presidio "	"	143	"	555	"
1/459	447 8/10	"	Presidio "	"	145	"	556	"
1/460	640	"	Presidio "	"	147	"	557	"

POOR COPY

Certificates, with sidings included, issued to the Galveston, Harrisburg & San Antonio R. R. for the section of road beginning at the western sill of the western approach to the bridge over the West Navidad river and ending at the center of a red sandstone culvert, the first one east of Buck branch, being 27 miles and 47 feet of main track and 3,800 feet of sidings.

Number of certificate.	Acres.	When issued.	Where located.	Patented.	Unpatented sur. No.	Block.	Abst. No.	Patentee.
1/461	640	July 17, 1874	Presidio county	Jan. 20, 1890	149	8	558	G. H. & S. A. R. R. Co.
1/462	"	"	Presidio "	28,	151	"	559	"
1/463	"	"	Presidio "	"	153	"	560	
1/464	"	"	Presidio "	"	155	"	561	
1/465	"	"	Presidio "	"	157	"	562	
17								
1/466	"	"	Presidio "	"	159	"	563	
1/467	"	"	Presidio "	"	161	"	564	
1/468	"	"	Presidio "	"	163	"	565	
1/469	"	"	Presidio "	"	165	"	566	
1/470	"	"	Presidio "	"	167	"	567	
1/471	"	"	Presidio "	"	169	"	568	
1/472	"	"	Presidio "	"	171	"	569	
1/473	"	"	Presidio "	"	173	"	570	
1/474	"	"	Presidio "	"	175	"	571	
1/475	"	"	Presidio "	"	177	"	572	
1/476	"	"	Presidio "	"	179	"	573	
1/477	"	"	Presidio "	"	181	"	574	
1/478	"	"	Presidio "	"	183	"	575	
1/479	"	"	Presidio "	"	185	"	576	
1/480	"	"	Presidio "	"	187	"	577	
1/481	"	"	Presidio "	"	189	"	578	
1/482	"	"	Presidio "	"	191	"	579	
1/483	"	"	Presidio "	"	193	"	580	
1/484	"	"	Presidio "	"	195	"	581	
1/485	"	"	Presidio "	"	197	"	582	
1/486	"	"	Presidio "	"	199	"	583	
1/487	"	"	Presidio "	"	201	"	584	
1/488	"	"	Presidio "	"	203	"	585	
1/489	"	"	Presidio "	"	205	"	586	
1/490	"	"	Presidio "	"	207	"	587	
1/491	"	"	Presidio "	"	209	"	588	
1/492	"	"	Presidio "	"	211	"	589	
1/493	"	"	Presidio "	"	213	"	590	
1/494	"	"	Presidio "	"	215	"	591	
1/495	"	"	Presidio "	"	217	"	592	
1/496	"	"	Presidio "	"	219	"	593	
1/497	"	"	Presidio "	"	221	"	594	
1/498	"	"	Presidio "	"	223	"	595	
1/499	"	"	Presidio "	"	225	"	596	
1/500	"	"	Presidio "	"	227	"	597	
1/501	"	"	Presidio "	"	229	"	598	
1/502	"	"	Presidio "	"	231	"	599	
1/503	"	"	Presidio "	"	233	"	600	
18								
1/504	"	"	Presidio "	"	235	"	601	
1/505	"	"	Presidio "	"	237	"	602	

BLEED THROUG

Certificates, with sidings included, issued to the Galveston, Harrisburg & San Antonio R. R. for the section of road beginning at the western sill of the western approach to bridge over the West Navidad river and ending at the center of a red sandstone culvert, being the first one east of "Buck branch," being 27 miles and 47 feet of main track and 3,800 feet of sidings.

Number of certificate.	Acres.	When issued.	Where located.	Unpatented sur. No.	Block.	Abst. No.
1/506	640	July 17, 1874	Presidio county	" 239	8	603
1/507	"	"	"	" 241	"	604
1/508	"	"	"	" 243	"	605
1/509	"	"	"	" 245	"	606
1/510	"	"	"	" 247	"	607
1/511	"	"	"	" 249	"	608
1/512	"	"	"	" 251	"	609
1/513	"	"	"	" 253	"	610
1/514	"	"	"	" 255	"	611
1/515	"	"	"	" 257	"	612
1/516	"	"	"	" 259	"	613
1/517	"	"	"	" 261	"	614
1/518	"	"	"	" 263	"	615
1/519	"	"	"	" 265	"	616
1/520	"	"	"	" 267	"	617
1/521	"	"	"	" 269	"	618
1/522	"	"	"	" 271	"	619
1/523	"	"	"	" 273	"	620
1/524	"	"	"	" 275	"	621
1/525	"	"	"	" 277	"	622
1/526	"	"	"	" 279	"	623
1/527	"	"	"	" 281	"	624
1/528	"	"	"	" 283	"	625
1/529	"	"	"	" 285	"	626
1/530	"	"	"	" 287	"	627
19						
1/531	"	"	"	" 289	"	628
1/532	"	"	"	" 291	"	629
1/533	"	"	"	" 293	"	630
1/534	"	"	"	" 295	"	631
1/535	"	"	"	" 297	"	632
1/536	"	"	"	" 299	"	633
1/537	"	"	"	" 301	"	634
1/538	"	"	"	" 303	"	635
1/539	"	"	"	" 305	"	636
1/540	"	"	"	" 307	"	637
1/541	"	"	"	" 309	"	638
1/542	"	"	"	" 311	"	639
1/543	"	"	"	" 313	"	640
1/544	"	"	"	" 316	"	641
1/545	"	"	"	" 317	"	642
1/546	"	"	"	" 319	"	643
1/547	"	"	"	" 321	"	644
1/548	"	"	"	" 323	"	645
1/549	"	"	"	" 325	"	646
1/550	"	"	"	" 327	"	647

POOR COPY

Certificates, with sidings included, issued to the Galveston, Harrisburg & San Antonio R. R. for the section of road beginning at the western sill of the western approach to the bridge over the West Navidad river and ending at the center of a red sandstone culvert, being the first one east of "Buck branch," being 27 miles and 47 feet of main track and 3,800 feet of sidings.

Number of certificate.	Acres.	When issued.	Where located.	Unpatented sur. No.	Block.	Abst. No.
1/551	640	July 17, 1874	Presidio county	" 329	8	648
1/552	"	"	"	" 331	",	649
1/553	"	"	"	" 333	"	650
1/554	"	"	"	" 335	"	651
1/555	"	"	"	" 337	"	652
1/556	"	"	"	" 339	"	653
20						
1/557	"	"	"	" 341	"	654
1/558	"	"	"	" 343	"	655
1/559	"	"	"	" 345	"	656
1/560	"	"	"	" 347	"	657
1/561	"	"	"	" 349	"	658
1/562	"	"	"	" 351	"	659
1/563	"	"	"	" 353	"	660
1/564	"	"	"	" 355	"	661
1/565	"	"	"	" 357	"	662
1/566	"	"	"	" 359	"	663
1/567	"	"	"	" 361	"	664
1/568	"	"	"	" 363	"	665
1/569	"	"	"	" 365	"	666
1/570	"	"	"	" 367	"	667
1/571	"	"	"	" 369	"	668
1/572	"	"	"	" 371	"	669
1/573	"	"	"	" 373	"	670
1/574	"	"	"	" 375	"	671
1/575	"	"	"	" 377	"	672
1/576	"	"	"	" 379	"	673
1/577	"	"	"	" 381	"	674
1/578	"	"	"	" 383	"	675
1/579	"	"	"	" 385	"	676
1/580	"	"	"	" 387	"	677
1/581	"	"	"	" 389	"	678
1/582	"	"	"	" 391	"	679
1/583	"	"	"	" 393	"	680
1/584	"	"	"	" 395	"	681
1/585	"	"	"	" 397	"	682
1/586	"	"	"	" 399	"	683
1/587	"	"	"	" 401	"	684
1/588	"	"	"	" 403	"	685
1/589	"	"	"	" 405	"	686
1/590	"	"	"	" 407	"	687
1/591	"	"	"	" 409	"	688
1/592	"	"	"	" 411	"	689
1/593	"	"	"	" 413	"	690
21						
1/594	"	"	"	" 415	"	691
1/595	"	"	"	" 417	"	692

BLEED THROUG

Certificates, with siding- included, issued to the Galveston, Harrisburg & San Antonio R. R. for the section of road beginning at the western sill of the western approach to the bridge over the West Navidad river and ending at the center of a red sandstone culvert, being the first one east of "Buck branch," being 27 miles and 47 feet of main track and 3,800 feet of sidings.

Number of certificate.	Acres.	When issued.	Where located.	Unpatented sur. No.	Block.	Abst. No.
1/596	640	July 17, 1874	Presidio county	" 419	8	693
1/597	"	"	"	" 421	"	694
1/598	"	"	"	" 423	"	695
1/599	"	"	"	" 425	"	696
1/600	"	"	"	" 427	"	697
1/601	"	"	"	" 429	"	698
1/602	"	"	"	" 431	"	699
1/603	"	"	"	" 433	"	700
1/604	"	"	"	" 435	"	701
1/605	"	"	"	" 437	"	702
1/606	"	"	"	" 439	"	703
1/607	"	"	"	" 441	"	704
1/608	"	"	"	" 443	"	705
1/609	"	"	"	" 445	"	706
1/610	"	"	"	" 447	"	707
1/611	"	"	"	" 449	"	708
1/612	"	"	"	" 451	"	709
1/613	"	"	"	" 453	"	710
1/614	"	"	"	" 455	"	711
1/615	"	"	"	" 457	"	712
1/616	"	"	"	" 459	"	713
1/617	"	"	"	" 461	"	714
1/618	"	"	"	" 463	"	715
1/619	"	"	"	" 465	"	716
1/620	"	"	"	" 467	"	717
22						
1/621	"	"	"	" 469	"	718
1/622	"	"	"	" 471	"	719
1/623	"	"	"	" 473	"	720
1/624	"	"	"	" 475	"	721
1/625	"	"	"	" 477	"	722
1/626	"	"	"	" 479	"	723
1/627	"	"	"	" 481	"	724
1/628	"	"	"	" 483	"	725
1/629	"	"	"	" 485	"	726
1/630	"	"	"	" 487	"	727
1/631	"	"	"	" 489	"	728
1/632	"	"	"	" 491	"	729
1/633	"	"	"	" 493	"	730
1/634	"	"	"	" 495	"	731
1/635	"	"	"	" 497	"	732
1/636	"	"	"	" 499	"	733
1/637	"	"	"	" 501	"	734
1/638	"	"	"	" 503	"	735
1/639	"	"	"	" 505	"	736
1/640	"	"	"	" 507	"	737

POOR COPY

Certificates, *including* with sidings included, issued to the Galveston, Harrisburg & San Antonio R. R. for the section of road beginning at the western sill of the western approach to the bridge over the West Navidad river and ending at the center of a red sandstone culvert, it being the first one east of "Buck branch," being 27 miles and 47 feet of main track and 3,800 feet of sidings.

Number of certificate.	Acres.	When issued.	Where located.	Unpatented sur. No.	Block.	Abst. No.
1/641	640	July 17, 1874	Presidio county	" 509	8	738
1/642	"	"	"	" 511	"	739
1/643	"	"	"	" 513	"	740
1/644	"	"	"	" 515	"	741
1/645	"	"	"	" 517	"	742
23						
1/646	"	"	"	" 519	"	743
1/647	"	"	"	" 521	"	744
1/648	"	"	"	" 523	"	745
1/649	"	"	"	" 525	"	746
1/650	"	"	"	" 527	"	747
1/651	"	"	"	" 529	"	748
1/652	"	"	Brewster county.....	" 531	"	490
1/653	"	"	"	" 533	"	491
1/654	"	"	"	" 535	"	492
1/655	"	"	"	" 537	"	493
1/656	"	"	"	" 539	"	494
1/657	"	"	"	" 541	"	495
1/658	"	"	"	" 543	"	496
1/659	"	"	"	" 545	"	497
1/660	"	"	"	" 547	"	498
1/661	"	"	"	" 549	"	499
1/662	"	"	"	" 551	"	500
1/663	"	"	"	" 553	"	501
1/664	"	"	"	" 555	"	502
1/665	"	"	"	" 557	"	503
1/666	"	"	"	" 559	"	504
1/667	"	"	"	" 561	"	505
1/668	"	"	"	" 563	"	506
1/669	"	"	"	" 565	"	507
1/670	"	"	"	" 567	"	508
1/671	"	"	"	" 569	"	509
1/672	"	"	"	" 571	"	510
1/673	"	"	"	" 573	"	511
1/674	"	"	"	" 575	"	512
1/675	"	"	"	" 577	"	513
1/676	"	"	"	" 579	"	514
1/677	"	"	"	" 581	"	515
1/678	"	"	"	" 583	"	516
1/679	"	"	"	" 585	"	517
1/680	"	"	"	" 587	"	518
1/681	"	"	"	" 589	"	519
1/682	"	"	"	" 591	"	520
1/683	"	"	"	" 593	"	521
24						
1/684	"	"	"	" 595	"	522
1/685	"	"	"	" 597	"	523

BLEED THROU

Certificates, with sidings included, issued to the Galveston, Harrisburg & San Antonio R. R. for the section of road beginning at the western sill of the western approach to the bridge over the West Navidad river and ending at the center of a red sandstone culvert, it being the first one east of "Buck branch," being 27 miles and 47 feet of main track and 3,800 feet of sidings.

Number of certificate.	Acres.	When issued.	Where located.	Unpatented sur. No.	Block.	Abst. No.
1/686	640	July 17, 1874	Brewster county.....	599	8	524
1/687	"	"	" "	601	"	525
1/688	"	"	" "	603	"	526
1/689	"	"	" "	1	9	352
1/690	"	"	" "	3	"	353
1/691	"	"	" "	5	"	354
1/692	"	"	½ Jeff Davis " .... ½ Brewster "	7	"	355
1/693	"	"	Jeff Davis "	9	"	200
1/694	"	"	" "	11	"	201
1/695	"	"	" "	13	"	202
1/696	"	"	" "	15	"	203
1/697	"	"	" "	17	"	204
1/698	"	"	Brewster "	19	"	356
1/699	"	"	" "	21	"	357
1/700	"	"	" "	23	"	358
1/701	"	"	" "	25	"	359
1/702	"	"	" "	27	"	360
1/703	"	"	" "	29	"	361
1/704	"	"	" "	31	"	362
1/705	"	"	" "	33	"	363
1/706	"	"	" "	35	"	364
1/707	"	"	" "	37	"	365
1/708	"	"	" "	39	"	366
25						
1/709	"	"	" "	41	"	367
1/710	"	"	" "	43	"	368
1/711	"	"	" "	45	"	369
1/712	"	"	" "	47	"	370
1/713	"	"	" "	49	"	371
1/714	"	"	" "	51	"	372
1/715	"	"	" "	53	"	373
1/716	"	"	" "	55	"	374
1/717	"	"	" "	57	"	375
1/718	"	"	½ Brewster & .... ½ Jeff Davis "	59	"	376
1/719	"	"	Jeff Davis "	61	"	206
1/720	"	"	" "	63	"	207
1/721	"	"	" "	65	"	208
1/722	"	"	" "	67	"	209
1/723	"	"	" "	69	"	210
1/724	"	"	" "	71	"	211
1/725	"	"	" "	73	"	212
1/726	"	"	" "	75	"	213
1/727	"	"	" "	77	"	214
1/728	"	"	" "	79	"	215
1/729	"	"	" "	81	"	216
1/730	"	"	" and .... ½ Brewster "	83	"	145- 377

POOR COPY

Certificates, with sidings included, issued to the Galveston, Harrisburg & San Antonio R. R. Co. for the section of road beginning at the western sill of the western approach to the bridge over the West Navidad river and ending at the center of a red sandstone culvert, it being the first one east of Buck's branch, being 27 miles and 47 feet of main track and 3,800 feet of sidings.

Number of certificate.	Acres.	When issued.	Where located.	Unpatented sur. No.	Block.	Abst. No.
1/731	640	July 17, 1874	Brewster.... / ½ Jeff Davis Co....	" 85	9	378-146
1/732	"	"	Brewster county.....	" 87	"	379
1/733	"	"	" "	" 89	"	380
26						
1/734	"	"	" "	" 91	"	381
1/735	"	"	" "	" 93	"	382
1/736	"	"	" "	" 95	"	383
1/737	"	"	" "	" 97	"	384
1/738	"	"	" "	" 99	"	385
1/739	"	"	" "	" 101	"	386
1/740	"	"	" "	" 103	"	387
1/741	"	"	" "	" 105	"	388
1/742	"	"	" "	" 107	"	389
1/743	"	"	" "	" 109	"	390
1/744	"	"	" "	" 111	"	391
1/745	"	"	" "	" 113	"	392
1/746	"	"	" "	" 115	"	393
1/747	"	"	" "	" 117	"	394
1/748	"	"	" "	" 119	"	395
1/749	"	"	" "	" 121	"	396
1/750	"	"	" "	" 123	"	397
1/751	"	"	" "	" 125	"	398
1/752	"	"	" "	" 127	"	399
1/753	"	"	" "	" 129	"	400
1/754	"	"	" "	" 131	"	401
1/755	"	"	Brewster " .... / ½ Jeff Davis "	" 133	"	402-147
1/756	"	"	Jeff Davis "	" 135	"	148
1/757	"	"	" "	" 137	"	149
1/758	"	"	" "	" 139	"	150
1/759	"	"	" "	" 141	"	151
1/760	"	"	" "	" 143	"	152
1/761	"	"	" "	" 145	"	153
1/762	"	"	" "	" 147	"	154
1/763	"	"	" "	" 149	"	155
1/764	"	"	Brewster "	" 151	"	403
1/765	"	"	" "	" 153	"	404
1/766	"	"	" "	" 155	"	405
1/767	"	"	" "	" 157	"	406
1/768	"	"	" "	" 159	"	407
1/769	"	"	" "	" 161	"	408
1/770	"	"	" "	" 163	"	409
27						
1/771	"	"	" "	" 165	"	410
1/772	"	"	" "	" 167	"	411
1/773	"	"	" "	" 169	"	412
1/774	"	"	" "	" 171	"	413
1/775	"	"	" "	" 173	"	414

BLEED THR

Certificates, with sidings included, issued to the Galveston, Harrisburg & San Antonio R. R. for the section of road beginning at the western sill of the western approach to the bridge over the West Navidad river and ending at the center of a red sandstone culvert, it being the first one east of "Buck's branch," being 27 miles and 47 — of main track and 3,800 feet of sidings.

Number of certificate.	Acres.	When issued.	Where located.	Unpatented sur. No.	Block.	Abst. No.
1/776	640	July 17, 1874	Brewster county....	" 175	9	415
1/777	"	"	" "	" 177	"	416
1/778	"	"	" "	" 179	"	417
1/779	"	"	" "	" 181	"	418
1/780	"	"	" "	" 183	"	419
1/781	"	"	" "	" 185	"	420
1/782	"	"	" "	" 187	"	421
1/783	"	"	" "	" 189	"	422
1/784	"	"	" "	" 191	"	423
1/785	"	"	" " ...	" 193	"	424
1/786	"	"	" "	" 195	"	425
1/787	"	"	" "	" 197	"	426
1/788	"	"	" "	" 199	"	427
1/789	"	"	" "	" 201	"	428
1/790	"	"	" "	" 203	"	429
1/791	"	"	" "	" 205	"	430
1/792	"	"	" "	" 207	"	431
1/793	"	"	" "	" 209	"	432
1/794	"	"	" "	" 211	"	433
1/795	"	"	Jeff Davis & Brewster " ..	" 213	"	434-156
1/796	"	"	Jeff Davis "	" 215	"	157
28						
1/797	"	"	Jeff Davis "	" 217	"	158
1/798	"	"	" "	" 219	"	159
1/799	"	"	" "	" 221	"	160
1/800	"	"	" "	" 223	"	161
1/801	"	"	Brewster "	" 1	10	276
1/802	"	"	" " ...	" 3	"	277
1/803	"	"	" "	" 5	"	278
1/804	"	"	" "	" 7	"	279
1/805	"	"	" "	" 9	"	280
1/806	"	"	" "	" 11	"	281
1/807	"	"	" "	" 13	"	282
1/808	"	"	" "	" 15	"	283
1/809	"	"	" "	" 17	"	284
1/810	"	"	" "	" 19	"	285
1/811	"	"	" "	" 21	"	286
1/812	"	"	" "	" 23	"	287
1/813	"	"	Kimble "	Sep. 9, 1876, 1	E	206
1/820	"	"	San Saba "	" " " 1	.....	500
1/831	"	"	Val Verde "	Unpatented 15	A2	882
1/835	"	"	Crockett "	" 49	"	1806
1/840	"	"	" "	" 51	"	1807
1/843	"	"	" "	" 53	"	1808
1/846	"	"	" "	" 55	"	1809
1/851	"	"	McCulloch "	" 47	.....	426

UGH POOR COPY

Certificates, with sidings included, issued to the Galveston, Harrisburg & San Antonio R. R. Company for the section of road beginning at the western sill of the western approach to the bridge over the West Navidad river and ending at the center of a red sandstone culvert, being the first one east of Buck branch, being 27 miles and 47 feet of main track and 3,800 feet of sidings.

Number of certificate.	Acres.	When issued.	Where located.	Patented.	Unpatented sur. No.	Block.	Abst. No.
1/855	640	July 17, 1874	Kimble county	Jan'y 13, 1877	15	G	214
1/858	"	"	Pecos "	.....	" 1	A2	1944

BLEED THROU

29

EXHIBIT "C."

Certificates, with sidings included, issued to the Galveston, Harrisburg & San Antonio R. R. for the section of road beginning at a red sandstone culvert, the first one east of Buck's branch, and ending at the turn-table at Luling, being 16 miles and 1,610 feet of main track and one mile and 968 feet of sidings.

Number of certificate.	Acres.	When issued.	Where located.	Unpatented sur. No.	Block.	Abst. No.
859	640	May 17, 1875	Brewster county.....	" 25	10	288
860	"	"	" "	" 27	"	289
861	"	"	" "	" 29	"	290
862	"	"	" "	" 31	"	291
863	"	"	1/2 Brewster " .... 1/2 Jeff Davis "	" 33	"	292-162
864	"	"	Jeff Davis "	" 35	"	163
865	"	"	" "	" 37	"	164
866	"	"	" "	" 39	"	165
867	"	"	" "	" 41	"	166
868	"	"	" "	" 43	"	167
869	"	"	1/10 Jeff Davis " .... 9/10 Pecos "	" 45	"	168-4681
870	"	"	Jeff Davis "	" 47	"	169
871	"	"	" "	" 49	"	170
872	"	"	" "	" 51	"	171
873	"	"	" "	" 53	"	172
874	"	"	1/2 Brewster " .... 1/2 Jeff Davis "	" 55	"	173-293
875	"	"	Brewster "	" 57	"	294
876	"	"	" "	" 59	"	295
877	"	"	" "	" 61	"	296
878	"	"	" "	" 63	"	297
879	"	"	" "	" 65	"	298
880	"	"	" "	" 67	"	299
881	"	"	" "	" 69	"	300
882	"	"	" "	" 71	"	301
883	"	"	" "	" 73	"	302
884	"	"	" "	" 75	"	303
885	"	"	" "	" 77	"	304
886	"	"	" "	" 79	"	305
887	"	"	" "	" 81	"	306
888	"	"	" "	" 83	"	307

30

889	"	"	" "	" 85	"	308
890	"	"	" "	" 87	"	309
891	"	"	" "	" 89	"	310
892	"	"	" "	" 91	"	311
893	"	"	" "	" 93	"	312
894	"	"	" "	" 95	"	313
895	"	"	" "	" 97	"	314
896	"	"	" "	" 99	"	315
897	"	"	" "	" 101	"	316
898	"	"	" "	" 103	"	317
899	"	"	" "	" 105	"	318
900	"	"	" "	" 107	"	319
901	"	"	" "	" 109	"	320
902	"	"	" "	" 111	"	321
903	"	"	" "	" 113	"	322

SH POOR COPY

Certificates, with sidings included, issued to the Galveston, Harrisburg & San Antonio R. R. for the section of road beginning at the red sandstone culvert, the first one east of Buck's branch, and ending at the turn-table at Luling, being 16 miles and 4,610 feet of main track and 968 feet of sidings.

Number of certificate.	Acres.	When issued.	Where located.	Unpatented sur. No.	Block.	Abst. No.
904	640	May 17, 1875	Brewster county.....	" 115	10	323
905	"	"	½ Brewster " .... ½ Jeff Davis "	" 117	"	324–174
906	"	"	½ Brewster " .... ½ Jeff Davis "	" 119	"	325–175
907	"	"	½ Pecos " .... ½ Jeff Davis "	" 121	"	176–4682
908	"	"	Pecos "	" 123	"	4420
909	"	"	" "	" 125	"	4421
910	"	"	" "	" 127	"	4422
911	"	"	" "	" 129	"	4423
912	"	"	" "	" 131	"	4424
913	"	"	½ Brewster " .... ½ Pecos "	" 133	"	326–4679
914	"	"	½ Brewster " .... ½ Pecos " ...	" 135	"	327–4680
915	"	"	Brewster "	" 137	"	328
916	"	"	" "	" 139	"	329
31						
917	"	"	" "	" 141	"	330
918	"	"	" "	" 143	"	331
919	"	"	" "	" 145	"	332
920	"	"	" "	" 147	"	333
921	"	"	" "	" 149	"	334
922	"	"	" "	" 151	"	335
923	"	"	" "	" 153	"	336
924	"	"	" "	" 155	"	337
925	"	"	" "	" 157	"	338
926	"	"	" "	" 159	"	339
927	"	"	" "	" 161	"	340
928	"	"	" "	" 163	"	341
929	"	"	" "	" 165	"	342
930	"	"	" "	" 167	"	343
931	"	"	" "	" 169	"	1404
932	"	"	" "	" 171	"	344
933	"	"	" "	" 173	"	1405
934	"	"	" "	" 175	"	345
935	"	"	" "	" 177	"	1406
936	"	"	" "	" 179	"	346
937	"	"	" "	" 181	"	1407
938	"	"	" "	" 183	"	347
939	"	"	" "	" 185	"	1408
940	"	"	" "	" 187	"	348
941	"	"	" "	" 189	"	1409
942	"	"	" "	" 191	"	349
943	"	"	" "	" 193	"	1410
944	"	"	" "	" 195	"	350
945	"	"	" "	" 197	"	1411
946	"	"	" "	" 199	"	351
947	"	"	Pecos "	" 201	"	4426
948	"	"	" "	" 203	"	4427

BLEED THROU

Certificates, with sidings included, issued to the Galveston, Harrisburg & San Antonio R. R. for the section of road beginning at a red sandstone culvert, it being the first one east of Buck's branch, and ending at the turn-table at Luling, being 16 miles and 4,610 feet of main track and one mile and 968 feet of sidings.

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Number of certificate.	Acres.	When issued.	Where located.	Unpatented sur. No.	Block.	Abst. No.
#949	640	May 17, 1875	Pecos county.....	" 205	10	4428
950	"	"	" "	" 207	"	4429
951	"	"	" "	" 209	"	4430
952	"	"	" "	" 211	"	4431
953	"	"	" "	" 213	"	4432
954	"	"	" "	" 215	"	4433
955	"	"	" "	" 217	"	4434
956	"	"	" "	" 219	"	4435
957	"	"	" "	" 221	"	4436
958	"	"	" "	" 223	"	4437
959	"	"	" "	" 225	"	4438
960	"	"	" "	" 227	"	4439
961	"	"	" "	" 229	"	4440
962	"	"	" "	" 231	"	4441
963	"	"	½ Buchel " .... / ½ Brewster "	" 233	"	321-1412
964	"	"	Buchel "	" 235	"	322
965	"	"	½ Buchel " .... / ½ Brewster "	" 237	"	323-1413
966	"	"	Buchel "	" 239	"	324
967	"	"	½ Buchel " .... / ½ Brewster "	" 241	"	325-1414
968	"	"	Buchel "	" 243	"	326
969	"	"	½ Buchel " .... / ½ Brewster "	" 245	"	327-1399
970	"	"	Buchel "	" 247	"	328
971	"	"	½ Buchel " .... / ½ Brewster "	" 249	"	329-1400
972	"	"	Buchel "	" 251	"	330
973	"	"	½ Buchel " ... / ½ Brewster "	" 253	"	331-1401
974	"	"	Buchel " ...	" 255	"	332
975	"	"	½ Buchel " .... / ½ Brewster "	" 257	"	333-1402
976	"	"	½ Buchel " .... / ½ Brewster "	" 259	"	334-1403
977	"	"	Buchel "	" 261	"	335
978	"	"	" "	" 263	"	336
979	"	"	" "	" 265	"	337
980	"	"	" "	" 267	"	338
981	"	"	" "	" 269	"	339
982	"	"	" "	" 271	"	340
983	"	"	" "	" 273	"	341

33

984	"	"	" "	" 275	"	342
985	"	"	" "	" 277	"	343
986	"	"	" "	" 279	"	344
987	"	"	" "	" 281	"	345
988	"	"	" "	" 283	"	346
989	"	"	" "	" 285	"	347
990	"	"	" "	" 287	"	348
991	"	"	" "	" 289	"	349
992	"	"	" "	" 291	"	350
993	"	"	½ Buchel " .... / ½ Pecos "	" 293	"	351-4673

POOR COPY

Certificates, with sidings included, issued to the Galveston, Harrisburg & San Antonio R. R. for the section of road beginning at the red sandstone culvert, the first one east of Buck's branch, and ending at the turn-table at Luling, being 16 miles and 4,100 feet of main track and one mile and 968 feet of sidings.

Number of certificate.	Acres.	When issued.	Where located.	Unpatented sur. No.	Block.	Abst. No.
#994	640	May 17, 1875	Pecos county .... / Buchel "	" 295	10	352–4674
995	"	"	Pecos " .... / Buchel "	" 297	"	353–4675
996	"	"	Pecos "	" 299	"	4442
997	"	"	" "	" 301	"	4443
998	"	"	" "	" 303	"	4444
999	"	"	" "	" 305	"	4445
1000	"	"	" "	" 307	"	4446
1001	"	"	" "	" 309	"	4447
1002	"	"	" "	" 311	"	4448
1003	"	"	" "	" 313	"	4449
1004	"	"	" "	" 315	11	4450
1005	"	"	" "	" 1	"	4451
1006	"	"	" "	" 3	"	4452
1007	"	"	" "	" 5	"	4453
1008	"	"	" "	" 7	"	4454
1009	"	"	Jeff Davis "	" 9	"	177
1010	"	"	" "	" 11	"	178
1011	"	"	" "	" 13	"	179
34						
1012	"	"	" "	" 15	"	180
1013	"	"	" "	" 17	"	217
1014	"	"	" "	" 19	"	218
1015	"	"	" "	" 21	"	219
1016	"	"	" "	" 23	"	220
1017	"	"	" "	" 25	"	221
1018	"	"	" "	" 27	"	222
1019	"	"	" "	" 29	"	223
1020	"	"	" "	" 31	"	224
1021	"	"	" "	" 33	"	225
1022	"	"	" "	" 35	"	226
1023	"	"	" "	" 37	"	227
1024	"	"	Presidio " .... / Pecos "	" 39	"	1075–4455
1025	"	"	Pecos "	" 41	"	4456
1026	"	"	" "	" 43	"	4457
1027	"	"	" "	" 45	"	4458
1028	"	"	" "	" 47	"	4459
1029	"	"	" "	" 49	"	4460
1030	"	"	" "	" 51	"	4461
1031	"	"	" "	" 53	"	4462
1032	"	"	" "	" 55	"	4463
1033	"	"	Jeff Davis "	" 57	"	228
1034	"	"	" "	" 59	"	229
1035	"	"	" "	" 61	"	230
1036	"	"	" "	" 63	"	231
1037	"	"	" "	" 65	"	232
1038	"	"	" "	" 67	"	233

BLEED THROU

Certificates, with siding included, issued to the Galveston, Harrisburg & San Antonio R. R. for the section of road beginning at a red sandstone culvert, the first one east of Buck's branch, and ending at the turn-table at Luling, being 16 miles and 4,610 feet of main track and one mile & 968 feet of sidings.

Number of certificate.	Acres.	When issued.	Where located.	Unpatented sur. No.	Block.	Abst. No.
#1039	640	May 17, 1875	Jeff Davis county....	" 69	11	234
35						
1040	"	"	" "	" 71	"	235
1041	"	"	" "	" 73	"	236
1042	"	"	" "	" 75	"	237
1043	"	"	" "	" 77	"	238
1044	"	"	" "	" 79	"	239
1045	"	"	1/4 Presidio " ... / 3/4 Pecos " ...	" 81	"	1096-4464
1046	"	"	Pecos "	" 83	"	4465
1047	"	"	" "	" 85	"	4466
1048	"	"	" "	" 87	"	4467
1049	"	"	" "	" 89	"	4468
1050	"	"	" "	" 91	"	4469
1051	"	"	" "	" 93	"	4470
1052	"	"	" "	" 95	"	4471
1053	"	"	" "	" 97	"	4472
1054	"	"	" "	" 99	"	4473
1055	"	"	" "	" 101	"	4474
1056	"	"	7/10 Reeves " ... / 2/10 Pecos " ... / 1/10 Presidio " ...	" 103	"	250-4457 1107
1057	"	"	Pecos "	" 105	"	240
1058	"	"	" "	" 107	"	241
1059	"	"	" "	" 109	"	242
1060	"	"	" "	" 111	"	243
1061	"	"	" "	" 113	"	244
1062	"	"	" "	" 115	"	245
1063	"	"	" "	" 117	"	246
1064	"	"	" "	" 119	"	247
1065	"	"	" "	" 121	"	248
1066	"	"	1/10 Reeves " ... / 9/10 Jeff Davis " ...	" 123	"	249-251
1067	"	"	Reeves "	" 125	"	252
1068	"	"	3/4 Reeves " ... / 1/4 Pecos " ..	" 127	"	253-4578
1069	"	"	Pecos "	" 129	"	4475
1070	"	"	" "	" 131	"	4476
1071	"	"	" "	" 133	"	4477
1072	"	"	" "	" 135	"	4478
1073	"	"	" "	" 137	"	4479
1074	"	"	" "	" 139	"	4480
1075	"	"	" "	" 141	"	4481
1076	"	"	" "	" 143	"	4482
1077	"	"	" "	" 145	"	4405
36						
1078	"	"	Reeves "	" 147	"	254
1079	"	"	" "	" 149	"	255
1080	"	"	" "	" 151	"	256
1081	"	"	1/4 Reeves " ... / 3/4 Jeff Davis " ...	" 153	"	257-250
1082	"	"	Jeff Davis "	" 155	"	251
1083	"	"	" "	" 157	"	252

SH POOR COPY

Certificates, with siding- included, issued to the Galveston, Harrisburg & San Antonio R. R. for the section of road beginning at a red sandstone culvert, the first one east of "Buck's branch," and ending at the turn-table at Luling, being 16 miles and 4,610 feet of main track and one mile & 968 feet of sidings.

Number of certificate.	Acres.	When issued.	Where located.	Unpatented sur. No.	Block.	Abst. No.
1084	640	May 17, 1875	Jeff Davis county.....	" 159	11	253
1085	"	"	" "	" 161	"	254
1086	"	"	" "	" 163	"	255
1087	"	"	" "	" 165	"	256
1088	"	"	¾ Jeff Davis " ... / ¼ Reeves " ...	" 167	"	257-258
1089	"	"	Reeves "	" 169	"	259
1090	"	"	" "	" 171	"	260
1091	"	"	" "	" 173	"	261
1092	"	"	⅝ Reeves " ... / ⅜ Pecos " ...	" 175	"	262-4577
1093	"	"	Pecos "	" 177	"	4406
1094	"	"	" "	" 179	"	4407
1095	"	"	" "	" 181	"	4408
1096	"	"	" "	" 183	"	4409
1097	"	"	" "	" 185	"	4410
1098	"	"	" "	" 187	"	4411
1099	"	"	" "	" 189	"	4412
1100	"	"	½ Reeves " ... / ½ Presidio " ...	" 191	"	263-1151
1101	"	"	Reeves "	" 193	"	264
1102	"	"	" "	" 195	"	265
1103	"	"	" "	" 197	"	266
1104	"	"	" "	" 199	"	267
37						
1105	"	"	½ Reeves " ... / ½ Jeff Davis " ...	" 201	"	268-258
1106	"	"	Jeff Davis "	" 203	"	259
1107	"	"	" "	" 205	"	260
1108	"	"	" "	" 207	"	1159
1109	"	"	" "	" 209	"	1160
1110	"	"	¾ Reeves " ... / ¼ Jeff Davis " ...	" 211	"	1161
1111	"	"	Reeves "	" 213	"	1162
1112	"	"	" "	" 215	"	1163
1113	"	"	" "	" 217	"	1164
1114	"	"	" "	" 219	"	1165
1115	"	"	Presidio "	" 221	"	1166
1116	"	"	1/5 Reeves " ... / 4/5 Pecos " ...	" 223	"	269-4576
1117	"	"	Pecos "	" 225	"	4413
1118	"	"	" "	" 227	"	4414
1119	"	"	" "	" 229	"	4415
1120	"	"	" "	" 231	"	4416
1121	"	"	" "	" 233	"	4417
1122	"	"	" "	" 235	"	4580
1123	"	"	Reeves "	" 237	"	
1124	"	"	" "	" 239	"	
1125	"	"	" "	" 241	"	
1126	"	"	" "	" 243	"	
1127	"	"	" "	" 245	"	
1128	"	"	" "	" 247	"	

BLEED THROUGH

Certificates, with sidings included, issued to the Galveston, Harrisburg & San Antonio R. R. for the section of road beginning at a red sandstone culvert, the first one east of Buck's branch, and ending at the turn-table at Luling, being 16 miles and 4,610 feet of main track and one mile & 968 feet of sidings.

Number of certificate.	Acres.	When issued.	Where located.	Patented.	Unpatented sur. No.	Block.	Abst. No.	Patentee.
1129	640	May 17, 1875	½ Jeff Davis... ½ Reeves Co.	.....	" 249	11		
1130	"	"	Jeff Davis	.....	" 251	"		
38								
1131	"	"	" "	.....	" 253	"		
1132	"	"	Reeves "	.....	" 255	"		
1133	"	"	" "	.....	" 257	"		
1134	"	"	" "	.....	" 259	"		
1135	"	"	" "	.....	" 261	"		
1136	"	"	" "	.....	" 263	"		
1137	"	"	" "	.....	" 265	"		
1138	"	"	" "	.....	" 267	"		
1139	"	"	" "	.....	" 269	"		
1140	"	"	Presidio "	.....	" 271	"	1191	
1141	"	"	⅞ Pecos " ⅛ Reeves "	.....	" 273	"	4418-12	
1142	"	"	Presidio "	Jan. 13, 1890	" 1	12	1193	G. H. & S. A. R. R.
1143	"	"	" "	"	" 3	"	1194	"
1144	"	"	" "	"	" 5	"	1195	"
1145	"	"	" "	"	" 7	"	1196	"
1146	"	"	" "	"	" 9	"	1197	"
1147	"	Aug. 11, 1875	" "	"	" 11	"	1198	"
1148	"	"	" "	"	" 13	"	1199	"
1149	"	"	" "	"	" 15	"	1200	"
1150	"	"	" "	"	" 17	"	1201	"
1151	"	"	" "	14,	" 19	"	1202	"
1152	"	"	" "	"	" 21	"	1203	"
1153	"	"	" "	"	" 23	"	1204	"
1154	"	"	" "	"	" 25	"	1205	"
1155	"	"	" "	"	" 27	"	1206	"
1156	"	"	" "	"	" 29	"	1207	"
1157	"	"	" "	"	" 31	"	1208	"
1158	"	"	" "	"	" 33	"	1209	"
1159	"	"	" "	"	" 35	"	1210	"
1160	"	"	" "	"	" 37	"	1211	"
1161	"	"	" "	"	" 39	"	1212	"
1162	"	"	" "	"	" 41	"	1213	"
1163	"	"	" "	"	" 43	"	1214	"
1164	"	"	" "	"	" 45	"	1215	"
1165	"	"	" "	"	" 47	"	1216	"
1166	"	"	" "	"	" 49	"	1217	"

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39 "EXHIBIT D."

Certificates, with sidings included, issued to the Galveston, Harrisburg & San Antonio R. R. Company for the section of road beginning at station-house at Luling and ending at the west end of the siding at Kingsbury, being 60,922½ feet of main track and 2,767 feet of sidings and switches.

Number of cert.	Acres.	When issued.	Where located.	Patented.	Unpatented sur. No.	Block.	Abst. No.	Patentee.
1167	640	Sept. 1, 1875	Presidio county	Jan. 2, 1890	51	12	1218	G. H. & S. A. R. R.
1168	"	"	"	3, "	53	"	1219	"
1169	"	"	"	"	55	"	1220	"
1170	"	"	"	"	57	"	1221	"
1171	"	"	"	"	59	"	1222	"
1172	"	"	"	"	61	"	1223	"
1173	"	"	"	"	63	"	1224	"
1174	"	"	"	4, "	65	"	1225	"
1175	"	"	"	"	67	"	1226	"
1176	"	"	"	"	69	"	1227	"
1177	"	"	"	"	71	"	1228	"
1178	"	"	"	"	73	"	1229	"
1179	"	"	"	"	75	"	1230	"
1180	"	"	"	"	77	"	1231	"
1181	"	"	"	"	79	"	1232	"
1182	"	"	"	"	81	"	1233	"
1183	"	"	"	"	83	"	1234	"
1184	"	"	"	"	85	"	1235	"
1185	"	"	"	"	87	"	1236	"
1186	"	"	"	6, "	89	"	1237	"
1187	"	"	"	"	91	"	1238	"
1188	"	"	"	"	93	"	1239	"
1189	"	"	"	"	95	"	1240	"
1190	"	"	"	"	97	"	1241	"
1191	"	"	"	"	99	"	1242	"
1192	"	"	"	"	101	"	1243	"
1193	"	"	"	"	103	"	1244	"
1194	"	"	"	"	105	"	1245	"
1195	"	"	"	"	107	"	1246	"
40								
1196	"	"	"	"	109	"	1247	"
1197	"	"	"	7, "	111	"	1248	"
1198	"	"	"	"	113	"	1249	"
1199	"	"	"	"	115	"	1250	"
1200	"	"	"	"	117	"	1251	"
1201	"	"	"	"	119	"	1252	"
1202	"	"	"	"	121	"	1253	"
1203	"	"	"	"	123	"	1254	"
1204	"	"	"	"	125	"	1255	"
1205	"	"	"	8, "	127	"	1256	"
1206	"	"	"	"	129	"	1257	"
1207	"	"	"	Unpatented	1	13	527	
1208	"	"	"	"	3	"	528	
1209	"	"	"	"	5	"	529	
1210	"	"	"	"	7	"	530	
1211	"	"	"	"	9	"	531	

BLEED THROU

Certificates, with sidings included, issued to the Galveston, Harrisburg & San Antonio R. R. Company for the section of road beginning at station-house at Luling and ending at the west end of the siding at Kingsbury, being 60,922½ feet of main track and 2,767 feet of sidings and switches.

Number of certificate.	Acres.	When issued.	Where located.	Patented.	Unpatented sur. No.	Block.	Abst. No.	Patentee.
1212	640	Sep. 1, 1875	Brewster county	.....	" 11	13	532	
1213	"	"	" "	.....	" 13	"	533	
1214	"	"	" "	.....	" 15	"	534	
1215	"	"	" "	.....	" 17	"	535	
1216	"	"	" "	.....	" 19	"	536	
1217	"	"	" "	.....	" 21	"	537	
1218	"	"	" "	.....	" 23	"	538	
1219	"	"	" "	.....	" 25	"	539	
1220	"	"	" "	.....	" 27	"	540	
1221	"	"	" "	.....	" 29	"	541	
1222	"	"	" "	.....	" 31	"	542	
41								
1223	"	"	" "	.....	" 33	"	543	
1224	"	"	" "	.....	" 35	"	544	
1225	"	"	" "	.....	" 37	"	545	
1226	"	"	" "	.....	" 39	"	546	
1227	"	"	" "	.....	" 41	"	547	
1228	"	"	" "	.....	" 43	"	548	
1229	"	"	" "	.....	" 45	"	549	
1230	"	"	" "	.....	" 47	"	550	
1231	"	"	" "	.....	" 49	"	551	
1232	"	"	" "	.....	" 51	"	552	
1233	"	"	" "	.....	" 53	"	553	
1234	"	"	" "	.....	" 55	"	554	
1235	"	"	" "	.....	" 57	"	555	
1236	"	"	" "	.....	" 59	"	556	
1237	"	"	" "	.....	" 61	"	557	
1238	"	"	" "	.....	" 63	"	558	
1239	"	"	" "	.....	" 65	"	559	
1240	"	"	" "	.....	" 67	"	560	
1241	"	"	" "	.....	" 69	"	561	
1242	"	"	" "	.....	" 71	"	562	
1243	"	"	" "	.....	" 73	"	563	
1244	"	"	" "	.....	" 75	"	564	
1245	"	"	" "	.....	" 77	"	565	
1246	"	"	" "	.....	" 79	"	566	
1284	"	"	Schleicher "	July 8, 1876	9	B	382	
1285	"	"	" "	" "	11	"	278	
1289	"	"	Sutton "	Aug. 1, "	25	C	205	G. H. & S.A.R. R.Co.
1336	596 7/10	"	San Saba "	Jan. 11, 1887	1	...	505	"
1337	640	"	" "	" 12, 1877	1	...	506	"
1339	"	"	" "	" 12, 1877	1	...	507	"
1340	"	"	" "	" "	1	...	508	"
1341	320	"	55 acres McCulloch " / 265 acres Menard "	" 25, 1887	75	...	432-1324	"
1356	640	"	McCulloch "	Aug. 4, 1876	69	D	448	"
1357	"	"	Val Verde "	Unpatented	17	A2	Omitted.	
1358	"	"	" "	"	59	A2	886	

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42 EXHIBIT "E."

Certificates, with siding- included, issued to the Galveston, Harrisburg & San Antonio R. R. Co. for the section of road beginning at east pier of Guadalupe bridge, thence eastward at a point opposite the depot at Kingsbury or west end of the siding where the last inspection terminated, being 14 miles and 1,510 feet of main track and two miles & 686 feet of side tracks.

Number of certificate.	Acres.	When issued.	Where located.	Patented.	Unpatented sur. No.	Block.	Abst. No.	Patentee.
1359	640	Nov. 10, 1876	Schleicher county	Sept. 28, 1888	1	H	315	G. H. & S. A. R'y.
1360	"	"	" "	"	3	"	316	"
1361	"	"	" "	25,	5	"	317	"
1362	463 1/10	"	" "	"	7	"	318	"
1363	640	"	" "	28,	9	"	319	"
1364	"	"	" "	"	11	"	320	"
1365	"	"	" "	"	13	"	321	"
1366	"	"	" "	"	15	"	322	"
1367	609 3/4	"	" "	"	17	"	323	"
1368	640	"	" "	"	19	"	324	"
1369	"	"	" "	"	21	"	325	"
1370	"	"	" "	"	23	"	326	"
1371	"	"	" "	"	25	"	327	"
1372	"	"	" "	"	27	"	328	"
1373	"	"	" "	"	29	"	329	"
1374	"	"	" "	"	31	"	330	"
1375	"	"	" "	"	33	"	331	"
1376	"	"	" "	"	35	"	332	"
1377	"	"	" "	"	37	"	333	"
1378	"	"	" "	"	39	"	334	"
1379	"	"	" "	"	41	"	335	"
1380	"	"	" "	Oct. 4, 1888	43	"	336	"
1381	"	"	" "	3,	45	"	337	"
1382	"	"	" "	"	47	"	338	"
1383	"	"	" "	"	49	"	339	"
1384	"	"	" "	2,	51	"	340	"
1385	"	"	" "	"	53	"	341	"
43								
1386	"	"	" "	"	55	"	342	"
1387	"	"	" "	"	57	"	343	"
1388	"	"	" "	1,	59	"	344	"
1389	"	"	" "	Sep. 29, 1888	61	"	345	"
1390	"	"	" "	"	63	"	346	"
1391	"	"	" "	"	65	"	347	"
1392	"	"	" "	28,	67	"	348	"
1393	"	"	" "	"	69	"	280	"
1394	"	"	" "	"	71	"	281	"
1395	"	"	" "	"	73	"	282	"
1396	"	"	" "	27,	75	"	283	"
1397	"	"	" "	"	77	"	284	"
1398	"	"	" "	"	79	"	285	"
1399	"	"	" "	"	81	"	286	"
1400	"	"	" "	26,	83	"	287	"
1401	"	"	" "	Sep. 2, 1885	1	I	288	"
1402	"	"	" "	"	3	...	289	"
1403	"	"	" "	"	5	...	290	"

BLEED THROU

Certificates, with sidings included, issued to the Galveston, Harrisburg & San Antonio R. R. Co. for the section of road beginning at east pier of Guadalupe bridge, thence eastward, ending at a point opposite the depot door at Kingsbury or west end of the siding where the last inspection terminated, being 14 miles and 1,510 feet of main track and two miles and 686 feet of side tracks.

Number of certificate.	Acres.	When issued.	Where located.	Patented.	Unpatented sur. No.	Block.	Abst. No.	Patentee.
1404	640	Nov. 10, 1876	Schleicher Co.	Sep. 2, 1885	7	I	291	G.H.&S.A. R'y Co.
1405	"	"	" "	"	9	"	292	"
1406	"	"	" "	"	11	"	293	"
1407	"	"	" "	Aug. 27,	13	"	294	"
1408	"	"	" "	28,	15	"	295	"
1409	"	"	" "	"	17	"	296	"
1410	"	"	" "	"	19	"	297	"
1411	"	"	" "	"	21	"	298	"
1412	"	"	" "	"	23	"	299	"
44								
1413	"	"	" "	"	25	"	300	"
1414	"	"	" "	29,	27	"	301	"
1415	"	"	" "	"	29	"	302	"
1416	"	"	" "	Sep. 1,	31	"	303	"
1417	"	"	" "	Aug. 29,	33	"	304	"
1418	"	"	" "	"	35	"	305	"
1419	"	"	" "	"	37	"	306	"
1420	"	"	" "	28,	39	"	307	"
1421	"	"	" "	29,	41	"	308	"
1422	"	"	" "	"	43	"	309	"
1423	"	"	" "	"	45	"	310	"
1424	"	"	" "	"	47	"	311	"
1425	"	"	" "	"	49	"	312	"
1426	"	"	" "	3,	51	"	313	"
1427	"	"	" "	"	53	"	314	"
1428	"	"	" "	"	55	"	246	"
1429	"	"	" "	"	57	"	247	"
1430	"	"	" "	"	59	"	248	"
1431	"	"	" "	"	61	"	249	"
1432	"	"	" "	4,	63	"	250	"
1433	"	"	" "	3,	65	"	251	"
1434	"	"	" "	"	67	"	252	"
1435	"	"	" "	"	69	"	253	"
1436	"	"	" "	"	71	"	254	"
1437	"	"	" "	"	73	"	255	"
1438	"	"	" "	"	75	"	256	"
1439	"	"	" "	"	77	"	257	"
1440	"	"	Sutton "	Aug. 10,	1	K	207	"
1441	"	"	Schleicher "	"	3	"	258	"
1442	"	"	" "	"	5	"	259	"
1443	"	"	" "	"	7	"	260	"
1444	"	"	Sutton "	"	9	"	208	"
1445	"	"	" "	"	11	"	209	"
1446	"	"	Schleicher "	"	13	"	261	"
1447	"	"	" "	8,	15	"	262	"
1448	"	"	" "	"	17	"	263	"

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45 Certificates, with siding included, issued to the Galveston, Harrisburg & San Antonio R. R. Co. for the section of road beginning at east pier of Guadalupe bridge, thence eastward, ending at a point opposite the depot door at Kingsbury or west end of the siding where the last inspection terminated, being 14 miles and 1,510 feet of main track and two miles and 686 feet of side tracks.

Number of certificate.	Acres.	When issued.	Where located.	Patented.	Unpatented sur. No.	Block.	Abst. No.	Patentee.
1449	640	Nov. 10, 1876	Sutton county..	Aug. 10, 1885	19	K	210	G. H. & S. A. R'y Co.
1450	"	"	" " ..	"	21	"	211	"
1451	"	"	" " ..	"	23	"	212	"
1452	"	"	" " ..	8,	25	"	213	"
1453	"	"	" " ..	10,	27	"	214	"
1454	"	"	" " ..	"	29	"	215	"
1455	"	"	Schleicher " ..	"	31	"	264	"
1456	"	"	" " ..	"	33	"	265	"
1457	"	"	" " ..	"	35	"	266	"
1458	"	"	" " ..	"	37	"	267	"
1459	"	"	" " ..	"	39	"	268	"
1460	"	"	Sutton " ..	"	41	"	216	"
1461	"	"	" " ..	"	43	"	217	"
1462	"	"	" " ..	"	45	"	218	"
1463	"	"	" " ..	"	47	"	219	"
1464	"	"	" " ..	"	49	"	220	"
1465	"	"	Schleicher " ..	"	51	"	269	"
1466	"	"	" " ..	"	53	"	270	"
1467	"	"	" " ..	"	55	"	271	"
1468	"	"	Sutton " ..	"	57	"	221	"
1469	"	"	" " ..	"	59	"	222	"
1470	"	"	" " ..	"	61	"	223	"
1471	"	"	" " ..	"	63	"	224	"
1472	"	"	" " ..	"	65	"	225	"
1473	"	"	Schleicher " ..	"	67	"	272	"
1474	"	"	" " ..	"	69	"	273	"
1475	"	"	" " ..	"	71	"	274	"
1476	"	"	Sutton " ..	"	73	"	226	"
1477	"	"	" " ..	"	75	"	227	"
46								
1478	"	"	" " ..	"	77	"	228	"
1479	"	"	" " ..	"	79	"	229	"
1480	"	"	" " ..	"	81	"	230	"
1481	"	"	Schleicher " ..	"	83	"	275	"
1482	"	"	" " ..	"	85	"	276	"
1483	"	"	" " ..	"	87	"	277	"
1484	"	"	" " ..	17,	1	L	212	"
1485	"	"	" " ..	"	3	"	213	"
1486	"	"	" " ..	"	5	"	214	"
1487	"	"	" " ..	"	7	"	215	"
1488	"	"	" " ..	"	9	"	216	"
1489	"	"	" " ..	"	11	"	217	"
1490	"	"	" " ..	"	13	"	218	"
1491	"	"	" " ..	"	15	"	219	"
1492	"	"	" " ..	"	17	"	220	"
1493	"	"	" " ..	"	19	"	221	"

BLEED THRO

Certificates, with sidings, issued to the Galveston, Harrisburg & San Antonio R. R. Co. for the section of road beginning at east pier of Guadalupe bridge, thence eastward, ending at a point opposite the depot door at Kingsbury or west end of the siding where the last inspection terminated, being 14 miles and 1,510 feet of main track and two miles and 686 feet of sidings.

Number of certificate.	Acres.	When issued.	Where located.	Patented.	Unpatented sur. No.	Block.	Abst. No.
1494	640	Nov. 10, 1876	Schleicher county.....	Aug. 17, 1885	21	L	222
1495	"	"	"	"	23	"	223
1496	"	"	"	"	25	"	224
1497	"	"	"	18,	27	"	225
1498	"	"	"	"	29	"	226
1499	"	"	"	17,	31	"	227
1500	"	"	"	"	33	"	228
1501	"	"	"	"	35	"	229
1502	"	"	"	"	37	"	230
1503	"	"	"	"	39	"	231
47							
1504	"	"	"	"	41	"	232
1505	"	"	"	"	43	"	233
1506	"	"	"	"	45	"	234
1507	"	"	"	"	47	"	235
1508	"	"	"	"	49	"	236
1509	"	"	"	Sept. 28, 1888	1	M	237
1510	"	"	"	"	3	"	238
1511	"	"	"	27,	5	"	239
1512	"	"	"	"	7	"	240
1513	"	"	"	"	9	"	241
1514	"	"	"	"	11	"	242
1515	"	"	"	"	13	"	243
1516	"	"	"	"	15	"	244
1517	"	"	"	26,	17	"	245
1518	"	"	"	"	19	"	349
1519	"	"	"	"	21	"	350
1520	"	"	"	25,	23	"	351
1521	"	"	"	"	25	"	352
1522	"	"	"	"	27	"	353
1523	"	"	"	"	29	"	354
1524	"	"	"	"	31	"	355
1525	"	"	"	"	33	"	356
1526	"	"	"	24,	35	"	357
1527	"	"	"	"	37	"	358
1528	"	"	"	"	39	"	359
1529	"	"	"	"	41	"	360
1530	"	"	"	22,	43	"	361
1531	"	"	"	"	45	"	362
1532	"	"	"	"	47	"	363
1533	"	"	"	"	49	"	364
1534	"	"	"	21,	51	"	365
1535	"	"	"	"	53	"	366
1536	"	"	"	"	55	"	367
1537	"	"	"	"	57	"	368
1538	"	"	"	"	59	"	369

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48 Certificates, with sidings included, issued to the Galveston, Harrisburg & San Antonio R'y Co. for the section of road beginning at east pier of Guadalupe bridge, thence eastward, ending at a point opposite the depot door at Kingsbury or west end of the siding where the last inspection terminated, being 14 miles and 1,510 feet of main track and two miles and 686 feet of side tracks.

Number of certificate.	Acres.	When issued.	Where located.	Patented.	Unpatented sur. No.	Block.	Abst. No.	Patentee.
1539	640	Nov. 10, 1876	Schleicher county	Sept. 21, 1888	61	M	370	G. H. & S. A. R'y Co.
1540	"	"	" "	"	63	"	371	"
1541	"	"	" "	"	65	"	372	"
1542	"	"	" "	"	67	"	373	"
1543	"	"	" "	"	69	"	374	"
1544	"	"	" "	"	71	"	375	"
1545	"	"	" "	20,	73	"	376	"
1546	"	"	" "	"	75	"	377	"
1547	"	"	" "	"	77	"	378	"
1548	"	"	" "	"	79	"	379	"
1549	"	"	Kimble "	.....	1	N	230	
1550	"	"	" "	.....	3	"	231	
1551	"	"	" "	.....	5	"	232	
1552	"	"	" "	.....	7	"	233	
1553	"	"	" "	.....	9	"	234	
1554	"	"	" "	.....	11	"	235	
1555	"	"	" "	.....	13	"	236	
1556	"	"	" "	.....	15	"	237	
1557	"	"	" "	.....	17	"	238	
1558	"	"	" "	.....	19	"	239	
1559	"	"	" "	.....	21	"	240	
1560	"	"	" "	.....	23	"	241	
1561	"	"	" "	.....	25	"	242	
1562	"	"	" "	.....	27	"	243	
1563	"	"	" "	.....	29	"	244	
1564	"	"	" "	.....	31	"	245	
1565	"	"	" "	.....	33	"	246	
1566	"	"	" "	.....	35	"	247	
1567	"	"	" "	.....	37	"	248	
49								
1568	"	"	" "	.....	39	"	249	
1569	"	"	" "	.....	41	"	250	
1570	"	"	" "	.....	43	"	251	
1571	"	"	" "	.....	45	"	252	
1572	"	"	" "	.....	47	"	253	
1573	"	"	" "	.....	49	"	254	
1574	"	"	" "	.....	51	"	255	
1575	"	"	" "	.....	53	"	256	
1576	"	"	" "	.....	55	"	257	
1577	"	"	" "	.....	57	"	258	
1578	"	"	" "	.....	59	"	259	
1579	"	"	" "	.....	61	"	260	
1580	"	"	" "	.....	63	"	261	
1581	"	"	" "	.....	65	"	262	
1582	"	"	" "	.....	67	"	263	
1583	"	"	" "	.....	69	"	264	

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Certificates, with sidings included, issued to the Galveston, Harrisburg & San Antonio R'y Co. for the section of road beginning at east pier of Guadalupe bridge, thence eastward, ending at a point opposite the depot door at Kingsbury or west end of the siding where the last inspection terminated, being 14 miles and 1,510 feet of main track and two miles and 686 feet of side tracks.

Number of certificate.	Acres.	When issued.	Where located.	Patented.	Unpatented sur. No.	Block.	Abst. No.	Patentee.
1584	640	Nov. 10, 1876	Kimble Co.	.....	71	N	265	
1585	"	"	" "	.....	73	"	266	
1586	"	"	" "	.....	75	"	267	
1587	"	"	" "	.....	77	"	268	
1588	"	"	" "	.....	79	"	269	
1589	"	"	" "	.....	81	"	270	
1590	"	"	" "	.....	83	"	271	
1591	"	"	" "	.....	85	"	272	
1592	"	"	" "	.....	87	"	273	
1593	"	"	" "	.....	89	"	274	
1594	"	"	" "	.....	91	"	275	
50								
1595	"	"	" "	.....	93	"	276	
1596	"	"	" "	.....	95	"	277	
1597	"	"	" "	.....	97	"	278	
1598	"	"	" "	.....	99	"	279	
1599	"	"	" "	.....	101	"	280	
1600	"	"	" "	.....	103	"	281	
1601	"	"	" "	.....	105	"	282	
1602	"	"	" "	.....	107	"	283	
1603	"	"	Val Verde "	.....	57	A2	883	
1604	"	"	Kimble "	.....	111	N	284	
1605	"	"	" "	.....	113	"	285	
1606	"	"	" "	.....	115	"	286	
1607	"	"	" "	.....	117	"	287	
1608	"	"	Val Verde "	.....	61	A2	884	
1609	"	"	Pecos "	.....	35	"	1945	
1610	"	"	" "	.....	37	"	1946	
1611	"	"	" "	.....	39	"	1947	
1612	"	"	" "	.....	41	"	1948	
1613	"	"	" "	.....	43	"	1913	
1614	"	"	" "	.....	45	"	1914	
1615	"	"	Zavalla "	Oct. 18, 1887	13	O	147	G. H. & S. A. R'y Co.
1616	"	"	Pecos "	.....	47	A2	1915	
1617	"	"	" "	.....	49	"	1916	
1618	"	"	" "	.....	51	"	1917	
1619	"	"	" "	.....	53	"	1918	
1620	"	"	" "	.....	55	"	1919	

3rd. That each of said certificates, the numbers of which are shown in said exhibits, was issued to and in the name of the Galveston, Harrisburg and San Antonio Railway Company at the time and for the purpose indicated in said exhibits, and were by said company at the time therein noted located and surveyed upon the lands in controversy, and were returned to and are on file in the general land office of the State of Texas, and in the cases therein enumerated patents have issued thereon.

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That by reason of said locations and surveys the defendant has unlawfully entered upon and taken possession of said lands, ejecting the plaintiff therefrom, and now unlawfully withholds the
51 same from plaintiff, to its great damage.

That the Buffalo Bayou, Brazos and Colorado Railroad Company was chartered by the special act of the legislature of the State of Texas approved February 11th, 1850.

That by the special act of the legislature of the State of Texas approved February 11, 1854, the said Buffalo Bayou, Brazos and Colorado Railroad Company and this defendant, as its successors, was restricted to an extension of its road to Austin and to a line extending thence to a connection with any road running north of Austin to the Pacific ocean.

The said railroad companies were not entitled to receive any lands for the construction of any road from Columbus to San Antonio and westward for which it received certificates, as shown by said exhibits.

That by the special act of the legislature of the State of Texas approved July 27, 1870, the name of the Buffalo Bayou, Brazos & Colorado Railroad Company was changed to The Galveston, Harrisburg & San Antonio Railway Company, the defendant, and under the provisions of said special act the defendant company for the first time was granted the privilege and authority of constructing a railway to San Antonio from Columbus to the Guadalupe bridge and over the line for which certificates were issued, as shown in said exhibits, and at that time the constitution of 1869–'70 forbade the legislature from authorizing or granting lands to railway companies for the construction of their roads, though no land was granted by said act.

(5.) That there were issued to the defendant company 415 certificates by the commissioner of the general land office, numbered from 1/1 to 1/415, for a line of road from "the point of junction with the old line of the Buffalo Bayou, Brazos and Colorado Railroad Company, at a distance of 493 feet west of the west end of the approach to the bridge over the Colorado river and ending at the west end of the west approach to the bridge over the West Navidad river, being 24 miles and 3,910 feet of main track and 6,266 feet of sidings," of which 415 certificates the 315 certificates shown in Exhibit "A" form a part.

That said section of road was constructed and completed between July 27, 1870, and December 19, 1873.

(6.) That there were issued to defendant company 433 cer-
52 tificates, numbered from 1/416 to 1/858, by the commissioner of the general land office for the construction of the portion of its road from "the western sill of the western approach to the bridge over the West Navidad river and ending at the center of a red sandstone culvert, it being the first one east of Buck branch, being twenty-seven miles and 47 feet of main track and 3,800 feet of sidings," of which 433 certificates the 407 certificates shown in Exhibit "B" form a part.

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That said section of road was constructed and completed between July 27, 1870, and June 25, 1874.

(7.) That there were issued to defendant company 308 certificates by the commissioner of the general land office, numbered from 859 to 1166, for the construction of the portion of its road from "a red sandstone culvert, the first one east of Buck's branch and ending at the turn-table at Luling, being 16 miles and 4,610 feet of main track and one mile and 968 feet of sidings," of which the 308 certificates shown in Exhibit "C" form the whole; that said section of road was constructed and completed between July 27, 1870, and January 16, 1875.

(8.) That there were issued to the defendant company 192 certificates by the commissioner of the general land office for the construction of the portion of its road between the "station-house at Luling, ending at the west end of the siding at Kingsbury, being 60,922½ feet of main track and 2,767 feet of sidings and switches," of which the 91 certificates shown in Exhibit "B" form a part.

That this section of road was constructed and completed between July 27, 1870, and July 12, 1875.

(9.) That there were issued to defendant company 262 certificates by the commissioner of the general land office, numbered from 1,359 to 1,620, for the construction of that portion of its road between "the east pier of the Guadalupe bridge, thence eastward, ending at a point opposite the depot door at Kingsbury or the west end of the siding where the last inspection terminated, being 14 miles and 1,510 feet of main track and two miles and 686 feet of side track," which 262 certificates *are* shown in Exhibit "E" form the whole.

That said section of road was constructed and completed between July 27, 1870, and October 27, 1876.

(10.) Plaintiff further represents and shows to the court that the certificates referred to in said exhibits were issued to the de-
53 fendant company for the construction of its road from the town of Columbus to the Guadalupe bridge, as heretofore shown, and that every portion of said road was constructed and completed between July 27, 1870, and October 27, 1876.

That at no time during said period was there any law in existence in this State authorizing the issuance of land certificates to the defendant company for main track or sidings, and especially does the plaintiff aver and represent that — no time during said period was there any law in existence authorizing the issuance of certificates to said company for the construction of its line of road between Columbus and the Guadalupe bridge.

Plaintiff therefore charges that the action of the commissioner of the general land office in issuing and delivering to the defendant company the land certificates and in permitting them to be located and surveyed upon the lands heretofore described and returned to and filed in the general land office of this State, as well as the issuance of patents shown in said exhibits, *were*, as before alleged, had and done wholly without authority of law and in plain violation

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of the constitution and laws of the State of Texas in force at that time.

(11.) The plaintiff further represents and shows to the court that, as will appear from the allegations heretofore made, certificates were issued by the commissioner of the general land office for the construction of that portion of defendant's road between the town of Columbus and the east pier of the Guadalupe bridge for five miles and 4,027 feet of sidings and turnouts at the rate of 16 sections of land per mile.

That, as heretofore charged, at no time during the construction of said road and the issuance of said certificates was there any law in existence in this State authorizing the issuance of certificates to the defendant company for the construction of sidings and turnouts, and the plaintiff therefore charges that the acts of said commissioner in issuing said certificates and permitting same to be located on the lands heretofore described and in issuing patents therefor, whenever done as shown in the exhibits forming a part of this petition, were done in violation of the constitution and laws of this State and are utterly null and void.

(12.) That, by reason of the unlawful acts of the said com-
54 pany in obtaining and holding the aforesaid certificates and in locating them upon the lands of plaintiff, it holds out to the world that it has some kind of title to said lands and a cloud is cast upon the title of plaintiff thereto.

Wherefore the said plaintiff prays for judgment, for possession of and title to the said lands, for a decree cancelling each of said certificates and patents heretofore described and removing the cloud cast upon the title by the location and survey of the same, for damages, costs, and general relief.

C. A. CULBERSON,
Attorney General.
R. L. BATTS,
Assistant for the State.

(Filed Mar. 13, 1893.
C. E. WAY, *Clerk.*)

Application for Removal.

Filed Mar. 6, 1893.

In the District Court of Brewster County, Texas.

THE STATE OF TEXAS *vs.* GALVESTON, HARRISBURG & SAN ANTONIO RAILWAY COMPANY.	# 101.

To the honorable district judge of Brewster county:

The petition of The Galveston, Harrisburg & San Antonio Railway Company, defendant in above-stated cause, respectfully represents that said company is the sole defendant in the above-entitled

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cause, and that the matter and amounts exceed, exclusive of interest and costs, the sum of five thousand dollars.

That your petitioner is a corporation duly incorporated under the laws of Texas and a resident thereof, having its domicile in said State of Texas.

That said suit is a suit of a civil nature, being a suit for the recovery of $879{,}078\frac{1}{2}{}_{0}$ acres, situated in the counties of Jeff Davis, Presidio, Brewster, Kimble, San Saba, Val Verde, Crockett, McCulloch, Pecos, Buchel, Reeves, Schleicher, Sutton, and Zavalla counties.

(2.) Your petitioner further represents that the defendant
55 is a corporation, duly incorporated under the laws of the State of Texas on the 11th day of February, 1850; that said company was invested with the right of constructing, owning, and maintaining a railway commencing at any suitable point on Buffalo bayou between Lynchburg and Houston, in the county of Harris, and thence running by such course and to such point at or near the Brazos river between the towns of Richmond and Washington, inclusive, as such company shall deem most suitable; that the corporate name of said company was the Buffalo Bayou, Brazos and Colorado Railway Company.

That the charter of said company was amended on the 31st day of January, 1852, by the legislature, which authorized said railway company to acquire, by purchase or gift, any real estate the directors shall think desirable in order to promote or hasten the construction of said railroad. They were authorized to borrow money on their bonds or notes at such rates as shall be deemed expedient and mortgage their property to secure the same.

That on the 29th day of January, 1853, the said railway company was by an amended act of the legislature authorized to locate, construct, own, and maintain a railway commencing at a suitable point on Buffalo bayou, in the county of Harris, and thence running by such course and to such point or points at or near the Brazos and Colorado rivers or across the same as said company may deed advisable, with the privilege of making, owning, and maintaining such branches to said road as they may deem expedient. It is further provided that there shall be granted to said company eight sections of land of 640 acres each for every mile of railroad actually completed and ready for use.

Again, on the 4th day of February, 1854, the said charter was so amended by an act of the legislature as to entitle it to all the rights, privileges, and benefits to accrue from any general law or laws that have or may hereafter be passed in this State to encourage the construction of railroads in the same manner and to the same extent as if the *gague* of said road was the same now fixed or which may be hereafter fixed upon by this State.

By virtue of another act of the legislature passed Feb'y 4th, 1854, the company was required, in order to avail itself of the act to which the said act is a supplement, to accept any donation of land from the State, they shall not be entitled to receive any such
56 donation under the provisions of this law that has been heretofore passed, on any portion of the road which has not been

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completed or ready for use within ten years from and after the passage of this act; provided that said company shall restrict themselves to the following route, viz., to an extension of their existing road to Austin, in Travis county, crossing the Brazos river at any point between the town of Richmond, in Fort Bend county, and Hidalgo Falls, in Washington county, and with the right of extending their road from Austin to connect with any road running north of Austin towards the Pacific ocean, providing such connection be made between the 96 and 98 parallels of longitude, and provided, further, that said company shall have no right to build branches from their main line.

Again, on the 27th day of July, 1870, an act was passed by the legislature supplementary to the act to incorporate the Buffalo Bayou, Brazos and Colorado Railway Company and to the other special acts relating to said company providing for the consolidation of its property and extending of its road. The first section of said supplementary act changes the name of the railway company, so that it should be known thereafter by the corporate name of the Galveston, Harrisburg & San Antonio Railway Company. It was provided by the third section of said act that the said company was authorized to extend the existing line of railway owned and operated by said company from Columbus, in Colorado county, to San Antonio, in the county of Bexar, within four years from the passage of this act, and thence to a terminus on the Rio Grande by such route as the directors shall deem feasible, with a branch from the most suitable point to New Braunfels, in Comal county, within four years from the passage of this act, or said new company may connect with any line of railway that may be constructed or under construction to San Antonio or the Rio Grande south of the latitude of the city of Austin and Colorado river instead of building its own line beyond the point of such connection, and may build to and connect with any line of railway that may be constructed or under construction, and it is not to form any part of any railroad line to the Pacific south of the 25th parallel of latitude, nothing therein being construed as to exclude such new company from the right to construct also any part of the line up the Colorado valley formerly designated by said sold-out company as to its route under the provisions
57 of the 11th section of the act of December 19, 1857.

And further provided in section 4 that said new company may consolidate with its existing railroad the bridge built by the Brazos Iron Bridge Company over the Brazos river at Richmond and the five miles of railroad, more or less, including said tracks from the town of Alleyton to the town of Columbus, built under the charter granted in 1860 to the Columbus Tap Railroad Company, including the bridge over the Colorado river at Columbus, together with all the franchises, rights, fixtures, appurtenances, etc.

It is further provided in section 8 of said supplementary act, in case it shall be made to appear to the governor that there has not been issued upon said railroad the full quantity of 16 sections of land script for every mile of same that was constructed and put in running order prior to the war of the late rebellion in accordance

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with the provisions of the charter and of the general laws of the State in force at the time regulating railroads, there shall be issued to said new company such script to the amount of any such deficiency, notwithstanding the said railroad may not have been constructed and completed at the rate of 25 miles each year, for the construction of the first 25 miles, as provided in the act of January 30, 1854. It is further provided in section 11 that said new company shall be entitled to the same or similar rights and relief, except State aid in bonds or endorsement or guarantee of interest or bonds granted to or provided for any other railroad company by the legislature and upon the same and similar terms and conditions, so far as such rights and relief are in their character applicable to said new company or its line or lines of railroads.

Petitioner further represents that the legislature of the State of Texas on the 13th day of November, 1866, passed an act for the benefit of railroad companies.

The first section provided that the grant of 16 sections of land to the mile to railroad companies heretofore or hereafter constructing railroads in Texas shall be extended under the same restrictions and limitations provided by law for ten years after the passage of the act.

On the 10th day of March, 1875, the legislature passed a
58 law whereby it granted to the Galveston, Harrisburg & San Antonio Railway Company until the 28th day of January, 1876, to complete said road to the city of San Antonio.

The constitution of the State of Texas, by article 10, section 6, for 1869, provided as follows: "The legislature shall not hereafter grant lands to any person or persons, nor shall any certificates for lands be sold at the land office, except to actual settlers upon the same and in lots not exceeding 160 acres." And amendment to said provision of the constitution was voted by the people of Texas by an election held on the 5, 6, 7, and 8 days of November, 1872, whereby it was provided that "the legislature of the State of Texas shall not hereafter grant lands, except for purposes of internal improvements, to any person or persons, nor shall any certificate for land be sold at the land office except to actual settlers upon the same and in lots not exceeding 160 acres: Provided, that the legislature shall not grant out of the public domain more than twenty sections for each mile completed in aiding in the construction of which land may be granted: And provided further, that nothing in the foregoing proviso shall affect any rights granted or secured by laws passed prior to the final adoption of this amendment."

The said amendment to the constitution was by an act of the legislature approved March 19, 1873.

That upon the adoption of said amendment to the constitution the legislature of Texas proceeded to grant to and provide for a large number of railroad rights to sixteen sections of land to the mile of completed road, as will more fully appear by reference to the special laws of the legislature, and defendant thereupon proceeded to construct its road from Columbus to the Guadalupe river, and did construct the same, relying in good faith upon the promise, agreement, and undertaking of the State as fully set forth in said

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section eleven of defendant's amended charter of May 27, 1870, and did from time to time receive the lands sued for as said construction proceeded and was completed in accordance with the law.

On the 16th day of August, 1876, the legislature of the State of Texas passed a general law granting sixteen sections of land for every mile of its road completed and put in running order.

On the 22nd day of April, 1882, the legislature of the State of Texas passed a law repealing the laws and parts of laws then
59 in force granting lands or land certificates to any person, firm, or corporation or company for the construction of railroads, canals, and ditches.

Petitioner further represents that in pursuance with said laws and by virtue of the original charter granted to said railway company, which was and became a contract with the State of Texas, and in pursuance of the law of January 30, 1854, and of the general and special laws of the State of Texas, and all of the charters of said railway company, — became entitled to the grant of sixteen sections of land per mile of its said completed road, as aforesaid, for which it received the certificates for land and which it located, as fully described in plaintiff's petition.

Petitioner further represents that its completed road, extending from San Antonio, in Bexar county, to the Rio Grande river, in El Paso county, is a distance of 623.14 miles; that by reason of the completion of its said road wholly within the time required by law between San Antonio and the Rio Grande river the said defendant became entitled to 9,970.24 additional certificates, calling for six hundred and forty (640) acres of land for each certificate, which would entitle the defendant company to locate 6,380,953.6 acres of land in the State of Texas, which the State declined to recognize.

By reason of the provisions of section 6, article 10, of the constitution of the State of Texas, withdrawing the grants of land to railroad companies, and by reason of the act of April 28, 1882, which in its effect has deprived petitioner of its land grants, as aforesaid, which it had earned, *and* the State of Texas, although requested, through her public officers, declined to issue and deliver to said railway company the said 9,970.24 certificates aforesaid, calling for 6,380,953.6 acres of land in the State of Texas, although said railway company had completed and put in running order within the time, under the provisions of the law, as aforesaid, its said railroad from Houston, in Harris county, to El Paso, in El Paso county.

That the constitution of 1869 and the act of the legislature in withdrawing the lands and depriving petitioner of its rights thereto *was* in violation of section 10, article 1, of the Constitution of the United States, which provides that no State should pass any
60 "law impairing the obligation of contracts," and also in violation of section 1 of the 14th amendment of the Constitution of the United States, which provides that "no State shall deprive any person of life, liberty, or property without due process of law, or deny to any person within its jurisdiction the equal protection of the laws."

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That said suit instituted, as aforesaid, against this defendant is a suit arising under the laws of the United States; all of which, with other necessary particulars, will more fully appear from the pleadings filed and referred to as a part of this petition in like manner as if therein at length transcribed as well as herein specifically set out.

Your petitioner further represents that this petition and bond for removal which accompanies the same was filed at or before the time when defendants are required by the laws of the State of Texas and the rule of said court in which this suit is brought to answer or plead to the complaint of plaintiff.

Your petitioner offers herewith good and sufficient surety for entering in the circuit court of the United States for the western district of Texas, on the first day of its next session, a copy of the record in this suit, and for paying all costs that may be awarded by said circuit court if said court shall hold that this suit was wrongfully or improperly removed thereto.

Your petitioner prays this honorable court to proceed no further herein except to make an order for the removal of this cause to the said circuit court, and to accept the said surety and bond, and to cause the record herein to be removed into the said circuit court of the United States for the western district of Texas; and your petitioner will ever pray.

T. D. COBBS,
Attorney for Petitioner.

(Filed this the 6th day of March, 1893.
C. E. WAY, *Clerk.*)

Bond for Removal.

Filed March 6, 1893.

61 THE STATE OF TEXAS *vs.* GALVESTON, HARRISBURG & SAN ANTONIO RAILWAY COMPANY. } #101. Suit Pending in the District Court of Brewster County, Texas.

Know all men by these presents that we, The Galveston, Harrisburg & San Antonio Railway Company, as principal, and E. P. Hill and W. N. Shaw, as sureties, are holden and firmly bound unto the State of Texas in the penal sum of one thousand dollars ($1,000.00); for the payment whereof, well and truly to be made unto the said State of Texas, we bind ourselves, our heirs, representatives, and assigns, jointly and severally, firmly by these presents.

Upon condition, nevertheless, that whereas the said Galveston, Harrisburg & San Antonio Railway Company having petitioned the honorable district court of the State of Texas in and for the county of Brewster for the removal of a certain cause therein pending, wherein The State of Texas is plaintiff and the said Galveston, Harrisburg & San Antonio Railway Company is defendant, to the

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circuit court of the United States in and for the northern district of Texas:

Now, if the said Galveston, Harrisburg and San Antonio Railway Company shall enter in the said circuit court of the United States for the western district of Texas, on the first day of its next session, a copy of the record in the said suit and shall well and truly pay all costs that may be awarded by said circuit court of the United States if said court shall hold that said suit was wrongfully or improperly removed thereto, then this obligation shall be void; otherwise to remain in full force and effect.

In witness whereof the said sureties have hereunto set their hands this the 27th day of February, A. D. 1893.

G., H. & S. A. R'Y CO.,
By T. D. COBBS.
E. P. HILL.
W. N. SHAW.

THE STATE OF TEXAS, }
County of Harris. }

I, E. P. Hill, of said county and State, one of the sureties named in the foregoing bond, being duly sworn, doth depose and
62 say: I am a resident of the State of Texas and a property-holder therein; that I am worth the sum of one thousand ($1,000.00) dollars over and above all my debts and liabilities and exclusive of property by law exempt from execution.

That I have property in the State of Texas liable to execution of the value of more than one thousand dollars.

E. P. HILL.

Sworn to and subscribed in my presence by E. P. Hill and by him sworn to before me this the 27th day of February, A. D. 1893.

Witness my hand and seal of office, at Houston, this the 27th day of February, A. D. 1893.

[SEAL.]

G. H. PENDARVIS,
Notary Public, Harris Co., Texas.

THE STATE OF TEXAS, }
County of Harris. }

I, W. N. Shaw, of said county and State, one of the sureties named in the foregoing bond, being duly sworn, doth depose and say: I am a resident of the State of Texas and a property-holder therein; that I am worth the sum of one thousand ($1,000.00) — over and above all of my debts and liabilities and exclusive of property by law exempt from execution; that I have property in the State of Texas liable to execution of the value of more than one thousand dollars.

W. N. SHAW.

Sworn to and subscribed in my presence by W. N. Shaw and by him sworn to before me this the 27th day of Feb'y, A. D. 1893.

Witness my hand and seal of office, at Houston, this 27th day of Feb'y, A. D. 1893.

[SEAL.]

G. H. PENDARVIS,
Notary Public, Harris Co., Texas.

I hereby certify that the sureties, W. N. Shaw and E. P. Hill, on the above bond are known to me and that I know them to be solvent, and that if a similar bond were offered to me with said E. P. Hill and W. N. Shaw as sureties I would not hesitate to accept the same.

Given under my hand this the 27th day of Feb'y, A. D. 1893.

S. H. BRASHEAR,
Judge 11th Judicial District of Texas.

63 Approved March 6th, 1893.
C. E. WAY, *Clerk.*

(Filed this the 6th day of March, 1893.
C. E. WAY, *Clerk.*)

Defendant's Original Answer.

Filed March 13, 1893.

In the District Court of Brewster County, Texas.

THE STATE OF TEXAS
vs.
THE GALVESTON, HARRISBURG & SAN ANTONIO RAILWAY COMPANY.

And now comes the defendant herein and demurs to plaintiff's petition filed in this cause, and for ground of demurrer say- that the same is wholly insufficient to have and to recover from defendant in the manner and form as alleged, and of this prays the judgment of the court.

T. D. COBBS,
Attorney for Defendant.

And by way of plea in this behalf, should said demurrer be overruled, then defendant avers that heretofore, to wit, on the 1st day of June, 1880, defendant company, as party of the first part, made, executed, and delivered to Andrew Pierce and George F. Stone, trustees, as parties of the second part, a second mortgage and deed of trust upon all and singular of the main line of said railroad as the same was then built from Harrisburg and Houston, in Harris county, to San Antonio, in Bexar county, in said State of Texas, being a distance of about two hundred and twenty-five (225) miles, together with all the franchises and rights so far as necessary to the proper enjoyment of said railroad from said Harrisburg and Houston to San Antonio, etc., etc., etc.; "also all and singular the lands, locations, surveys, land script, and rights to lands that have been or

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may be hereafter acquired by said party of the first part for
64 the construction of its main line of railroad from Harrisburg and Houston to San Antonio by virtue of any general or special acts of the legislature making donations of public lands, excepting such of said lands, locations, surveys, land script, or rights to lands as said party of the first part has heretofore disposed of by sale, together with all the estate, franchises, rights, title, interest, property, possession, claim, demand, and expectancy whatsoever, as well in law as in equity, of the said party of the first part in or to or of the said lands, locations, surveys, land scrip, and rights to lands or any part of the same, with all the privileges and appurtenances to the same belonging or appertaining."

That Andrew Pierce is dead and George F. Stone is now the sole surviving trustee under the mortgage to act; that said deed of trust was given to secure the second-mortgage gold bonds of said defendant company in a series of one thousand bonds of one thousand ($1,000.00) dollars each, numbered from one to one thousand, inclusive.

That said mortgage and said bonds are still subsisting, unpaid and unsatisfied.

That said defendant company, under the said charter and amendments and under the laws of Texas, were fully authorized to issue bonds and fully authorized to mortgage its land grants for the purpose of building, constructing, and equipping its railroad; that said mortgage bonds constituted a lien upon said lands to such an extent and in such way as any decree rendered in said cause would affect said bonds and security and the interest of the holders to such an extent as defendant believes, and so alleges, that said surviving trustee of said bonds is a necessary party thereto.

That said bonds, to the amount of one million ($1,000,000.00) dollars, were issued for valuable consideration under the said mortgage and by virtue of the laws of Texas authorizing the same prior to the institution of this suit, and that each and all of said bonds, as hereinbefore alleged, are still outstanding and in the hands of *bona fide* holders for value.

That said mortgage has been duly and legally recorded long prior to the institution of this suit in the counties in which said lands were situated, giving constructive notice thereof to the world, and particularly to plaintiff.

Wherefore defendant pleads the non-joinder of said George
65 F. Stone a necessary party hereto, and prays that the said cause be abated unless the said George F. Stone, as trustee as aforesaid, be made a party to this suit under proper terms to be prescribed by the court.

And of this plea the defendant prays the judgment of the court.

T. D. COBBS,
Attorney for Defendant.

Sworn to and subscribed before me this the 13th day of March, A. D. 1893.

[SEAL.]

C. E. WAY,
D. C., B. Co., Texas.

I.

Should said defendant's exceptions and plea be overruled, then defendant denies each and every allegation in plaintiff's petition contained, except when any part of the same is hereafter admitted to be true.

II.

Defendant admits that it received all the certificates described in plaintiff's petition; admits the number and date of issuance as therein stated; admits that the said certificates were surveyed as therein stated, and that the survey number, block number, and county wherein located are as therein stated.

III.

Defendant, further answering, sayeth that it is a corporation incorporated under the laws of Texas on the 11th day of February, 1850; that said company was invested with the right to construct, own, and maintain a railway commencing at any suitable point on Buffalo bayou between Lynchburg and Houston, in the county of Harris, thence running by such course and to such point at or near the Brazos river between the town- of Richmond and Washington, inclusive, as such company shall deem most suitable.

The corporate name of said company was the Buffalo Bayou, Brazos and Colorado Railway Company.

The charter of said company was amended on the 31st day of January, 1852, by the legislature, which authorized said railway company to acquire by purchase or gift any real estate the directors shall think desirable in order to promote or hasten the con-
66 struction of said railway. They were authorized to borrow money on their bonds or notes at such rates as shall be deemed expedient and mortgage their property to secure the same.

That on the 29th day of January, 1853, the said railway company, by an amended act of the legislature, were authorized to locate, construct, own, and maintain a railway commencing at a suitable point on Buffalo bayou, in Harris county, and thence running by such course and to such point or points at or near the Brazos and Colorado rivers or across the same as said company may deem feasible, with the privilege of making, owning, and maintaining such branches to said road as they may deem expedient.

It is further provided that there shall be granted to said company eight sections of land for 640 acres each for every mile of railway actually completed and ready for use.

Again, on the 4th day of February, 1854, the said charter was so amended by an act of the legislature as to entitle it to all the rights, privileges, and benefits to accrue from any general law or laws that have or may hereafter be passed in this State to encourage the construction of railroads in the same manner and to the same extent as if the gague of said road was the same now fixed or which may be hereafter fixed by the State.

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By virtue of another act of the legislature passed Feb'y 4, 1854, the company was required, in order to avail itself of the act of which the said act was a supplement, to accept any donation of land from the State. They shall not be entitled to receive any such donation under the provisions of this law that has been heretofore passed on any portion of the road which has not been completed or ready for use within ten years from and after the passage of this act, provided that said company shall restrict themselves to the following route, viz., to an extension of their existing road to Austin, in Travis county, crossing the Brazos river at any point between the town of Richmond, in Fort Bend county, and the town of Hidalgo Falls, in Washington county, and with the right of extending their road from Austin to connect with any road running north of Austin towards the Pacific ocean, providing such connection be made between the 96th and 98th parallel of longitude; and provided further that said company shall have no right to build *franchises*
67 from their main line.

Again, on the 27th day of July, 1870, an act was passed by the legislature supplementary to the act to incorporate the Buffalo Bayou, Brazos and Colorado Railroad Company and to the other acts relating to said company providing for the consolidation of its property and the extending of its said road.

The first section of said supplementary act changed the name of the railway company so that it should be known thereafter by the corporate name of the Galveston, Harrisburg & San Antonio Railway Company.

It was provided by the third section of said act that the said company was authorized to extend the existing line of railway owned and operated by said company from Columbus, in Colorado county, to San Antonio, within the county of Bexar, within four years from the passage of this act, and thence to a terminus on the Rio Grande by such route as the directors shall deem feasible, with a branch from the most suitable point to New Braunfels, in Comal county, within four years from the passage of this act, or said new company may connect with any line of railroad that may be constructed or under construction to San Antonio or the Rio Grande south of the latitude of the city of Austin and Colorado river, instead of building its own line beyond the point of such connection, and may build to and connect with any line of railway that may be constructed or under construction, and it is not to form any part of any railroad line to the Pacific south of the 25″ parallel of latitude, nothing therein being so construed as to exclude such new company from the right to construct any part of the line up the Colorado valley formerly designated by said "sold out" company as to its route under the provisions of the 11th section of the act of *the 11th of* December 19th, 1857, and further provided, in section 4, that said new company may consolidate with its existing railroad the bridge built by the Brazos Iron Bridge Company over the Brazos river at Richmond, and the five miles of railroad, more or less, including side tracks, from the town of Alleyton to the town of Columbus, built under the charter granted in the year 1860 to the Columbus

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Tap Railroad Company, including the bridge over the Colorado river at Columbus, together with all the franchises, rights, fixtures, and appurtenances of or upon any of the same, and may construct and maintain telegraphs along its line.

68 It is further provided in section 8 of said supplementary act, in case it shall be made to appear to the governor that there has not been issued upon said railroad the full quantity of 16 sections of land scrip for every mile of same that was constructed and put in order prior to the war of the late rebellion in accordance with the provisions of the charter and the general laws of the State in force at the time regulating railroads, there shall be issued to said new company said scrip to the amount of any such deficiency, notwithstanding the said railroad may not have been constructed and completed at the rate of twenty-five miles each year for the construction of the first twenty-five miles, as provided in the act of January 30, 1854.

It is further provided in section II that said new company shall be entitled to the same or similar rights and relief (except State aid in bonds or endorsement of or guarantee of interest on bonds) granted to or provided for any other railroad company by the legislature, and upon the same or similar terms and conditions so far as such rights and relief are in their character applicable to said new company or its line or lines of railroads.

IV.

Defendant, further answering in this behalf, represents that the legislature of the State of Texas, on the 13th day of November, 1866, passed an act for the benefit of railroad companies. The first section provided that the granting of sixteen sections of land to the mile to railroad companies heretofore or hereafter constructing railroads in Texas shall be extended under the same restrictions and limitations provided by law for ten years after the passage of the act.

V.

Defendant further represents that the legislature, on the 10th day of March, 1875, passed a law granting to the Galveston, Harrisburg & San Antonio Railway Company until the 28th day of January, 1876, to complete its said road to the city of San Antonio.

VI.

Defendant represents that by the constitution of the State of Texas, article 10, section 6, of 1869, it was provided as follows: "The legislature shall not hereafter grant lands to any person or persons, nor shall any certificates for lands be sold at the land office except to actual settlers upon the same and in lots not exceeding 160

69 acres." An amendment to said provision of the constitution was voted by the people of the State of Texas at an election held on the 5th, 6th, 7th, and 8th days of November, 1872, whereby it was provided "that the legislature of the State of Texas shall not

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hereafter grant lands except for purposes of internal improvements to any person or persons, nor shall any certificate of land be sold to any one except to actual settlers upon the same and in lots not exceeding 160 acres, provided that the legislature shall not grant out of the public domain more than twenty sections for each mile completed in aiding in the construction of which lands may be granted; and provided, further, that nothing in the foregoing proviso shall effect any rights granted or secured by laws passed prior to the final adoption of this amendment." The said amendment to the constitution was by an act of the legislature approved March 19, 1873.

That upon the adoption of said amendment to the constitution the legislature of Texas proceeded to grant to and provide for a large number of railroad rights to sixteen sections of land to the mile of completed road, as will more fully appear by reference to the special laws of the legislature, and defendant thereupon proceeded to construct its road from Columbus to the Guadalupe river and did construct the same, relying in good faith upon the promise, agreement, and undertaking of the State, as fully set forth in said section eleven of defendant's amended charter of May 27, 1870, and did from time to time receive the lands sued for as said construction proceeded, and was completed in accordance with law.

On the 16th of August, 1876, the legislature of the State of Texas passed a general law granting sixteen sections of land for every mile of its road completed and put in running order.

On the 22nd day of April, 1882, the legislature of the State of Texas passed a law repealing the laws and parts of laws then in force granting lands or land certificates to any person, firm, corporation, or company for the construction of railroads, canals, and ditches.

So defendant avers, as aforesaid, that it is entitled to said lands and to have the title thereto vested in it, as aforesaid, for the following additional reasons:

First. Because it is entitled to said lands by virtue of its said legislative charter and amendments thereto and by virtue of
70 the said general laws applicable to railroad companies passed prior to the constitution of 1869, and it avers that its rights thereunder were not intended to be affected and could not be affected or impaired by the prohibition contained in article ten, section six, of the constitution of 1869, the same being within the protection of section ten, article first, of the Constitution of the United States and of the fourteenth amendment thereof.

Second. Because it is entitled to said lands by virtue of an act of the legislature passed July 27, 1870, entitled "An act supplemental to an act to incorporate the Buffalo Bayou, Brazos and Colorado Railway Company and to other special acts relative to said railroad company," and by virtue of the amendment to article ten, section six, of the constitution of 1869, voted in 1872 and approved March 19, 1873, said constitutional amendment relating back as of the date of the adoption of the constitution of 1869 and removing all constitutional inhibition, if any, against legislative grants of

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lands in aid of railway companies and giving full force and effect to the provisions of said act of 1870 and prior legislation.

Third. Because it is entitled to said land by force and virtue of the provisions of section II of the said act of 1870 supplementary to its charter, and by reason of the fact that subsequently to the amendment to the constitution made in 1873 the legislature proceeded to and did make numerous and specific grants of sixteen sections of land per mile of completed road to other roads in this State; and defendant, relying upon the said provisions in its charter, commenced and continued the construction of its road thereafter in good faith and in reliance upon the recognition and performance by the plaintiff of its obligation to accord to defendant equal rights with other roads in favor of which special land grants of sixteen sections of land to the completed mile of railroad had been made.

Fourth. Because if it was not otherwise entitled thereto it was entitled to have and receive said lands by force and virtue of the provisions of said act of August 15, 1876, and by reason of the fact that on the faith of and in reliance upon the provisions of said act this defendant constructed that portion of its road between San Antonio and El Paso, consisting of six hundred and twenty-three and fourteen hundred- (623.14) miles, and defendant avers
71 that it thereby became entitled to receive from the State sixteen (16) sections of land for each mile of said completed road, aggregating six million three hundred and eighty thousand nine hundred and fifty-three and six-tenths (6,380,953.6), and that if it is not otherwise entitled to the land sued for herein by the State it is entitled to receive the same as part of the lands earned by it by the construction of its road, as aforesaid, between San Antonio and El Paso, which said road was constructed subsequent to August 15, 1876.

VII.

Defendant further avers that the decision- of the governor of the State of Texas that the said defendant company had done and performed the conditions precedent to the right to said lands and to all the necessary antecedent acts before the issue to said company of any certificates for said lands were and are conclusive against the State, and that said governor is and was by the various legislative acts hereinbefore alleged constituted the sole and final judge whether or not said antecedent acts have been performed, and that the title vested in said railway company by the certificate of the commissioner of the general land office and surveys thereunder pursuant to the findings and decisions of the governor of the State of Texas vested a full and perfect title to said lands in said railway company, which title has been legally acquired by your defendant aforesaid.

VIII.

Defendant further represents that by reason of the construction placed upon said laws and charters by all the departments of the State government and by reason of said grants of land to said de-

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fendant company credit was given to it in the money markets of the world, and it was enabled to raise and procure money for the purpose of constructing and extending its said railway by the mortgaging of said lands and all other property duly authorized by said legislature of the State of Texas; that said lands form a most important element in the credit originally obtained by said defendant company as the basis of floating its bonds; that said bonds were secured by deed of trust; that during more than ten years the State of Texas and her officials have stood by and allowed the assertion of title by defendant company in and to said lands, whereby credit was obtained as aforesaid, and that said State and said officials are therefore now estopped by laches from setting up any title in
72 and to said lands; that the demand made by said State is a stale demand, and that the defendant specially pleads laches, stale demands, and estoppel in bar of any claim so set up by the said State of Texas.

IX.

Defendant, further answering and by way of cross-bill or plea in reconvention, represents that in pursuance with said laws, general and special, and by virtue of the original charter granted to said railway company and its amendments that there arose between the said State of Texas and defendant a contract whereby the defendant was entitled to a grant of sixteen sections of land for each mile of its completed road from the State of Texas.

X.

Defendant represents that said railway company, together with its turnouts, is a distance of 847.13 miles, extending from Harris county to the Rio Grande river in El Paso county.

XI.

Defendant represents that the distance from San Antonio to the Rio Grande river in El Paso county is 623.14 miles.

XII.

Defendant further represents that the said defendant completed and put in running order its track from San Antonio to Rio Grande river in El Paso prior to the 22nd day of April, 1882, and under the laws aforesaid said defendant became entitled, at the rate of sixteen sections per mile of completed road, to 9,970.24 sections, entitling the said defendant company to locate by virtue thereof 6,380,953.6 acres of the unappropriated public domain of the State of Texas and at which time there was more than that quantity of unappropriated public domain.

XIII.

Defendant represents that it did not make application to the governor for the inspection of any part of the completed line of its

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railroad from San Antonio to the Rio Grande river in El Paso county, except a distance of 11 miles inspected, until on or about the 9th day of May, 1882, at which time the defendant, through H. B. Andrews, vice-president thereof, made application to Hon. O. M. Roberts, the then governor of the State of Texas, for a civil engineer to examine a portion of the completed road west of the city
73 of San Antonio, as aforesaid; whereupon the said governor refused to appoint an engineer for the inspection of 460 miles of road west of San Antonio, because he claimed that the law granting certificates for lands to railroads had then been repealed.

XIV.

Defendant, further answering, sayeth that if this honorable court should hold that any of the lands claimed by plaintiff in this cause were granted to said railway for sidings and turnouts, and that said lands therefor or for any other reason whatever should not have been legally granted to said company, nevertheless that said defendant company was at all times prior to the institution of said suit entitled to said lands, because it sayeth that at all times prior thereto it was entitled to a large number of valid certificates, as aforesaid, to wit, 9,970.24, which it never received, as aforesaid, and at all times prior thereto, under a proper accounting with the said State of Texas, was entitled to have issued to it and located upon lands amounting to at least 6,380,953.6 acres, to which it was legally entitled to have and hold and which the State of Texas, without regard to the right of defendant, has refused to grant certificates therefor or in any way to recognize defendant's right thereto.

XV.

Defendant, further answering, represents that by reason of the act of the State of Texas and all the officers of said State, the repeal of the said law on the 22nd day of April, and the action of the governor in refusing to appoint an engineer to inspect said railway west of San Antonio was a deprivation of defendant's right to said land under its said charter and the general and special laws of the State of Texas and did constitute an impairment of the contract entered into between said State and said railroad company through the charter and legislation aforesaid and in violation of section 10, article 1, of the Constitution of the United States, which declares "No state shall pass any law impairing the obligation of contracts," and in violation of the 14th article of amendments to said Constitution, which provides: "Nor shall any State deprive any person of life, liberty, or property without due process of law."

That defendant company, prior to the institution of this suit, in good faith and for a valuable consideration, conveyed to a
74 number of persons some of the sections of land sued for.

Wherefore defendant prays that, having answered so much of plaintiff's petition as *they are* advised it is necessary to do, ask to be hence dismissed with *their* reasonable cost in this behalf most wrongfully sustained; and defendant further prays:

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1.

That it may please your honor to declare and decree that the location and survey as aforesaid made by the G., H. & S. A. Railroad Company of the lands described in plaintiff's petition segregated the same from the mass of the public domain and became the property of said defendant free from any and all claims on the part of the State of Texas, and that the said railroad company thereby acquired a good and valid title thereto.

2.

That it may please your honor to adjudge and decree that by reason of the completion of its said railway west from San Antonio to the Rio Grande river in El Paso county, a distance of 623.14 miles, that the said defendant company became entitled to 9,970.24 certificates, authorizing the said railway company to locate 640 acres of land by virtue of each certificate, amounting to 6,380,953.6, and that defendant have a decree in its favor declaring that the said railway company is entitled to the same from the said State of Texas, and that the said defendant in all respects and in all particulars complied with the law then in force in constructing the same, and that under such laws, general and special, and its charters the State of Texas should have issued the land certificates in accordance therewith.

And if in the power of this court so to do, then for judgment for said land certificates aforesaid, requiring same to be issued to defendant.

That your honor do render a decree mandatory in its terms, commanding and directing the commissioner of the general land office of the State of Texas to issue to defendant patents for the lands herein sued for and described in plaintiff's petition in all cases where such patents have not already been issued to said railway company.

4.

And defendant further prays that if the judgment and decree herein asked for shall not be effective to secure obedience
75 thereto in the issuance of such patents to defendant, evidencing the title to the land as herein claimed, then defendant prays that the said decree be so made and framed that the same shall declare and adjudge the title in the said lands to be vested in defendant railway company in fee-simple and shall itself operate and serve as a muniment of title thereto.

5.

Defendant further prays that if it has not asked for appropriate relief that it have such further orders and decrees as may be necessary and proper in the premises to secure to it its rights, to

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general and special relief, and for all its costs in this behalf incurred.

T. D. COBBS,
Attorney for Defendant.

(Filed March 13, 1893.
C. E. WAY, *Clerk.*)

Order of Court Denying Application for Removal.

THE STATE OF TEXAS
vs.
THE GALVESTON, HARRISBURG & SAN ANTONIO RAILWAY COMPANY. } # 101.

MAR. 13TH, 1893.

On this day the petition and bond of the defendant to move this cause to the circuit court of the United States were presented in open court, and, the court having inspected the same, the petition to remove said cause to the circuit court of the United States is denied; to which defendant excepted; conditions of bond and sureties on bond held sufficient.

76 *Defendant's Plea, Protest, and Motion.*

Filed Sept. 13, 1893.

THE STATE OF TEXAS
vs.
THE GALVESTON, HARRISBURG & SAN ANTONIO RAILWAY COMPANY.

And now comes the defendant in the above-stated cause and represents to this honorable court that the defendant company filed a petition and bond for removal of said cause to the United States circuit court for the western district of Texas on the 6th day of March, 1893.

That said petition and bond was filed at the last term of this court at or before the time when defendant was required, under the law and rules of court, to answer in said cause; that defendant in due time and on the 13th day of March, 1893, presented the same to this court and requested the court to make an order granting the removal and to proceed no further with said cause; which order the court refused to make.

That defendant immediately and forthwith procured a record of said cause and filed the same in the United States circuit court for the western district of Texas, at El Paso, where the same is now pending, and is numbered 171 on the docket of said court, as appears from the certificate of the clerk of said court hereto attached as a part of this motion and marked "Exhibit A."

The record in said cause shows the issues involved depend on the construction of the Constitution and laws of the United States and present Federal questions.

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Among other Federal questions raised in said record by the answer of defendant it was shown that defendant acquired a vested right to land certificates prior to the repeal of the law withdrawing the public domain, and there is drawn in question the validity of the act of the legislature of Texas passed April 28, 1882, withdrawing the grants of land to railroad companies, and especially to this railroad.

Wherefore defendant shows this court by reason of the premises that it is without jurisdiction to try this cause, because the same has been under the law of Congress prôperly removed to
77 the United States circuit court for the western district of Texas, at El Paso, where the same is pending for trial and numbered 171 on the docket thereof, and of which the said United States circuit court has the sole and exclusive jurisdiction to try said cause.

Defendant therefore prays this honorable court to proceed no further herein, and herewith enters its protest against any further proceeding by the court herein. Wherefore, etc.

T. D. COBBS,
Att'y for Defendant.

In the United States Circuit Court for the Western District of Texas, at El Paso.

THE STATE OF TEXAS
vs.
G., H. & S. A. R'Y Co. } 171.

I, D. H. Hart, clerk of the said United States circuit court, do hereby certify that the record of the foregoing cause, which is numbered 101 on the docket of district court of Brewster county, has been filed in this court, where the same is on the docket of this court as number 171 and now pending for trial under the law authorizing the removal of causes from the State court to the United States court.

To all of which I certify under my hand and seal of court this the 28th day of August, A. D. 1893.

D. H. HART,
Clerk of the United States Court,
By WARNER A. GIBBS, *Dep.*

[SEAL.]

(Filed Sept. 13, 1893.
C. E. WAY, *Clerk.*)

Bill of Exceptions No. 1.

Filed Sept. 13, 1893.

THE STATE OF TEXAS
vs.
THE GALVESTON, HARRISBURG & SAN ANTONIO RAILWAY COMPANY. } Pending in the District Court of Brewster County, Texas.

78 Be it remembered that on the trial of the above-stated cause the defendant railway company filed a petition and

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bond for the removal of said cause on the 6th day of March, 1893, praying the court to make an order for the removal of said cause to the circuit court of the United States for the western district of Texas and to accept the said surety and bond and to cause the record therein to be removed unto the circuit court of the United States for the western district of Texas.

That the same was presented to said court at its first regular term thereafter, which was on the 13th day of March, 1893.

All of which, together with defendant's answer, was filed at or before the time when defendant was required by the laws of the State of Texas and the rule of said court in which the said suit was brought to answer or plead to the complaint of plaintiff.

And on said last-named day the court refused and declined to grant the order of removal; to which action the defendant duly excepted.

And whereas on this day the defendant now exhibits a motion in the shape of a plea in which defendant has attached a certificate as follows:

In the United States Circuit Court for the Western District of Texas, at El Paso.

THE STATE OF TEXAS *vs.* G., H. & S. A. R'Y CO. } No. 171.

I, D. H. Hart, clerk of the said United States circuit court, do hereby certify that the record of the foregoing cause, which is numbered 101 on the docket of the district court of Brewster county, has been filed in this court, where the same is on the docket of this court as number 171 and now pending for trial under the law authorizing the removal of causes from the State court to the United States court.

To all of which I certify under my hand and seal of court this the 28th day of August, A. D. 1893.

[Seal of United States Court.]

(Signed) D. H. HART,
Clerk of the United States Court,
By WARNER A. GIBBS, *Dep.*

79 Showing that a record of this cause has been duly filed in the United States circuit court for the western district of Texas, at El Paso, being numbered 171 on the docket of said court.

And whereas the defendant in said motion represents that by reason of the premises this court is without jurisdiction to try said cause because the same has been under the law of Congress properly removed to the United States circuit court for the western district of Texas, at El Paso, where the same is pending for trial, and numbered 171 on the docket thereof; that this court is without jurisdiction, and praying this court to proceed no further; which plea or motion being overruled by the court, the court thereupon

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proceeded with the trial of said cause; whereupon defendant protested against the action of the court in overruling the said motion and proceeding with the trial of said cause; and the said defendant, still protesting and objecting to the action of said court, presents this its bill of exceptions No. 1 and requests that same be signed by the said court and made a part of the record in said cause.

T. D. COBBS,
Attorney for Defendant.

Approved this the 13th day of September, A. D. 1893, and ordered to be made a part of the record of this cause.

WALTER GILLIS,
Judge 41st Judicial District.

(Filed Sept. 13, 1893.
C. E. WAY, *Clerk.*)

Plaintiff's First Supplemental Petition.

Filed Sept. 13, 1893.

In District Court of Brewster Co.

THE STATE OF TEXAS
vs.
THE GALVESTON, HARRISBURG & SAN ANTONIO RAILWAY CO.

80 Leave of the court had, plaintiff filed its first amended supplemental answer.

Plaintiff demurs generally to defendant's answer and upon its sufficiency asks judgment of the court.

And plaintiff especially excepts to defendant's answer and makes following assignment:

Plaintiff excepts to all that part of defendant's answer which sets up that said defendant company executed mortgage and deed of trust and prays that trustees be made parties; and pl't'ff prays that its plea in this behalf be overruled.

Plaintiff further especially excepts to section IV of said answer because said act of Nov. 13, 1866, therein referred to was unconstitutional and void, being in conflict with sec. 25, article VII, of the constitution of 1845, 1861, and 1866, and, further, because if said law is not void — was repealed by the adoption of the constitution of 1869, and especially by article VI, sec. 10, thereof, which provides that "the legislature shall not hereafter grant lands to any person or persons, nor shall any certificates for land be sold at the land office except to actual settlers upon the same and lots not exceeding one hundred and sixty acres;" which said constitutional provision took effect prior to July 27, 1870, when, as shown in said defendant's answer, defendant was for the first time authorized to construct that part of its road for which certificates mentioned in this cause were issued. Wherefore plaintiff prays that said section should be stricken from defendant's answer.

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Plaintiff especially excepts to sec. V of defendant's answer because the law of March 10, 1875, therein referred to granting said company to January, 1876, to complete its road to the city of San Antonio was passed after the construction of that part of defendant's road for which certificates herein mentioned were attempted to be given.

Upon this plaintiff asks judgment of the court, and that said section be stricken out of the answer.

Plaintiff especially excepts to section VI of said answer, which recites the adoption of the constitutional amendment of March 19, 1873, and to the effect that upon the adoption of that amendment the legislature proceeded to provide for a large number of railroads' rights to sixteen sections of land to the mile of completed road
81 and referring to section 11 of the special acts of July 27, 1870, for the following reasons:

(1.) Said law of July 27, 1870, was, if a law at all, a complete and perfect law at the time of its passage and was not dependent upon constitutional amendments adopted subsequent thereto, nor were its terms and provisions enlarged thereby nor by any special or other acts passed subsequent thereto.

(2.) The legislature did not have at the time of the passage of said law authority to grant lands in aid of the construction of railways and did not grant or attempt to grant land to defendant company for the construction of that part of its road from Columbus to Guadalupe river.

(3.) By section 11 said legislature attempted to grant only such rights or relief as was then in other companies and not such as might thereafter be acquired. Plaintiff prays, therefore, that part of its answer mentioned be stricken out.

Plaintiff especially excepts to those parts of section VI of defendant's answer which state that in 1876 the legislature passed a general law granting lands to railroads, and that in 1882 a law was passed repealing said first-named law, because both acts were passed subsequent to the construction of that part of defendant's road between Columbus and Guadalupe River bridge.

Wherefore plaintiff prays that the parts mentioned be stricken out.

Plaintiff excepts to those parts of section VI of defendant's answer as set forth its conclusions why plaintiff should not recover as follows:

To *his* first reason because all valid general laws providing for donation of land to railroads prior to 1869 were inoperative by their very terms before the time of the construction of said part of said road because all of said acts were repealed by the constitution of 1869 and because said acts were not constructive and their repeal did not conflict with any provisions of the Constitution of the United States.

To *his* second reason because the adoption of the constitutional amendment of 1873 did not "relate back" to an act passed in 1870.

To its third reason because "numerous and specific grants of sixteen sections of land per mile of completed road in this State"

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82 made in 1873 does not amend a special act made for another company in 1870.

To its fourth reason because the act of August 15, 1876, granting land for road thereafter constructed did not provide for donations of land for road theretofore constructed.

To *his* fifth reason because if defendant is or was entitled to any land for constructing a road from San Antonio to El Paso, its right thereto was entirely distinct and independent of any right to land for the construction of a road to Guadalupe River bridge arising under laws passed after said last-named portion of said road was constructed, and was an indefinite and undefined right to land, and was not a right to the land in suit. For the causes named plaintiff prays that the balance of said section VI and all recitals and matters of inducement leading thereto be stricken from the answer.

Plaintiff especially excepts to section VII of said answer, because there was no condition upon which said lands could have been secured by defendant for the construction of that part of its road between Columbus and Guadalupe River bridge and because the governor of the State of Texas was not sole and final judge as to whether or not defendant was entitled to land, but was, together with the commissioner of the general land office, but an agent of the State, and was on the matter in suit entirely without authority to act. Wherefore said section should be stricken from the answer, and plaintiff so prays.

Plaintiff especially excepts to section VIII of defendant's answer, because no act has been done by the State of Texas or any one authorized to act for her by which defendant company or her creditors were misled, but of her acts and laws all the world has notice, and because plaintiff is not defendant upon any enforced equity, but relies upon an absolute legal title, against which — can present no claim whatever. Wherefore plaintiff prays said section be stricken from the answer.

Plaintiff especially excepts to section- IX, X, XI, XII, XIII, XIV, and XV of defendant's answer, constituting what he calls cross-bill or plea in reconvention, for the following reasons:

(1.) Because said cross-bill — in fact and in effect a suit against the State of Texas instituted without her permission.

(2.) Because this is not a suit "brought for the recovery of any debt due by judgment, bond, bill, or otherwise," nor is de-

83 fendant's counter-claim "formed on a cause of action arising out of or incident to or connected with the plaintiff's cause of action."

(3.) Because this is a suit for specific property, and cannot be set by a claim indefinite, intangible, and uncertain in character and amount.

(4.) Because no claim arose against the State of Texas by reason of the facts alleged in defendant's answer, for the reason that before — acquired any right under said law it was, as shown by said answer, repealed.

(5.) Because said lands herein sued for were — located nor sur-

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veyed by virtue of any land certificates granted defendant for constructing its road from San Antonio to Rio Grande City.

And plaintiff especially excepts to prayer No. 2 in said cross-bill, because it is not a part of the duty of this court to make declarations of abstract rights or decrees which it does not pretend to be able to enforce, and because it is not within the power or authority of this court to issue a mandamus to the commissioner of the general land office of Texas.

And plaintiff prays that all of defendant's plea in reconvention, together with his prayers, be held insufficient and struck out of his answer.

Plaintiff further, by way of replication, says that before the passage of the law of 1882 mentioned by defendant all of the public domain of Texas had been appropriated, and of this he now offers proof.

THE STATE OF TEXAS, }
County of Brewster. }

In the District Court of said County, September Term, 1893.

THE STATE OF TEXAS
vs.
THE GALVESTON, HARRISBURG & SAN ANTONIO RAILWAY COMPANY. } No. —.

Plaintiff by way of replication further says that heretofore, to wit, on the 3rd day of February, 1890, The State of Texas, plaintiff in the present action, by a suit against The Galveston, Harrisburg & San Antonio Railway Co., defendant in the present action in the district court of Val Verde county, Texas, for about 396,160 acres of land located and surveyed by virtue of certificates issued to said defendant company for the construction of that portion of
84 defendant's road at the rate of 16 sections of land per mile between the Guadalupe River bridge and San Antonio.

That in the trial of said cause before the supreme court of the State of Texas and in the final adjudication thereof the defendant company depended upon the act of August 15, 1876, which reads as follows:

"An act to encourage the construction of railroads in Texas by donations of lands.

SECTION 1. Be it enacted by the legislature of the State of Texas: That any railroad company heretofore chartered, or which may be hereafter organized under the general laws of this State, shall upon the completion of a section of ten miles or more of its road, be entitled to receive, and there is hereby granted to every such railroad from the State, sixteen sections of land for every mile of its road so completed and put in running order; provided that no company whose road is less than three feet gag*ue* shall be entitled to receive any grant of lands under this section; provided further that com-

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panies constructing railroads on the prismoidal plan shall be entitled to eight sections of land per mile on the same terms as other roads; provided further that this act shall not be construed to renew or continue any right to companies who have failed or may fail to comply with the terms of their charters; with reference to the completion of portions of their roads in stated times; provided; further the provisions of this act shall not be so construed as to grant the aid herein provided for to any railroad that has already received or is otherwise entitled to receive aid from the State to the amount of sixteen sections of land to the mile."

Said company, in order to escape the last two provisos in section 1 of said act, contended that said company had never received and had never been entitled to receive aid from the State to the amount of sixteen sections of land to the mile for any part of the road which had prior to that time been constructed from Columbus to the Guadalupe River bridge.

The defendant in that action made a contention in the following language: "That theory of the act is that if a company has had a land grant in respect of its line and has failed to comply with the terms of its charter with reference to completion of portions
85 of its road in stated times, this chapter should not be construed to renew or continue the right to acquire land in respect of the same. This could not be applicable to a corporation which had never had the right to acquire lands in respect to the road in question, and in respect of which, therefore, there was no right which could by any possibility be renewed or continued. In respect of such a line the provisions as — the renewal or continuance could not be applicable, and there is no proviso which in anywise impairs the effect of the act as a fresh grant except the statement in the last clause that it shall not operate as a fresh grant when a road has already received or is otherwise entitled to receive aid to the amount of sixteen sections of land to the mile. There is nothing in the act which withdraws the grant therein contained from any company which, not having had land grant at all in respect of of its line, had failed to complete it within the prescribed time. The theory of the act seems clear upon its terms and reasonable in its provisions that if a company had had a grant and had failed to build the road under the inducement of the grant and in view of the benefits and advantages to be derived therefrom—that is to say, in consideration of the premiums which the State at that time considered it desirable to offer in order to secure construction of roads.

Article 4270 provides that it shall not be construed to renew or continue any right to any company which has failed or may fail to comply with the terms of its charter with reference to completion of portions of its road in stated times.

That could not be applicable to appellant, because it then had no right to earn lands which might or could be renewed or continued. If there was no right which could by any possibility be renewed or continued, this proviso could not, of course, affect the appellant if it were in the position of having no right to earn lands.

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The meaning of this section of the Revised Statutes would seem to be that if, notwithstanding it had a land grant, a company had not built its road in time, this act should not renew or continue it; if it already had a grant, this act should not give it another. Neither of these affects a company in the position which appellant occupied in respect to the Columbus to San Antonio line, viz., that it did not have and never had had a land grant in respect thereto."

This contention of defendant company in said suit was
86 adopted and followed by the supreme court of the State of Texas in the following language: "The Buffalo Bayou, Brazos and Colorado Railway Company had by special acts and by the general law of 1854 the right to receive lands for each section of twenty-five miles of railway constructed, but by a special act of February 4, 1854, it was restricted to an extension of its road to Austin and to a line extending thence to a connection with any road running north of Austin to the Pacific ocean. (Spec. Laws 1854, pp. 29, 70.)

The privilege of constructing a railway to San Antonio was conferred by the special act of 1870, which recognized the present corporation as the successor of the Buffalo Bayou, Brazos and Colorado Railway Company and authorized the change of name. At the date of that act the power to grant lands in aid of the construction of railways had been taken from the legislature by the constitution of 1870 and all laws making such grants impliedly repealed except as to existing rights. Const. 1870, art. 10, sec. 6. It follows that until the act of 1876 went into effect the appellant had never had any right to acquire lands from the State by the construction of its line to San Antonio, and consequently there was no right in that respect which but for the proviso in question would have been renewed."

"Does, then, the appellant corporation come within the meaning of the words 'companies who * * * may fail,' as found in the proviso? If the statute is to be construed as speaking from the time it took effect and not from the date of its passage, then the appellant is not included. It had already failed to comply with the law with reference to building to San Antonio when the act went into effect. At the date of the passage of the statute it had not failed. It still had until the adjournment of that session of the legislature to complete its road to the point named in compliance with the laws. We apprehend that no universal rule of construction can be adopted when a statute which makes a distinction between future and past transactions is passed upon one day to take effect upon another, but we think the general rule is that a statute speaks from the time it became a law, and that what has occurred between the date of its passage and the time it took effect is deemed, with respect to the statute, a past transaction. This is an analogy to the rule for the construction of wills. * * * Our conclusions being that
87 the appellant company had never acquired any right to earn lands by the construction of this particular line of road before the passage of the act of August 16, 1876, and having already failed to construct to San Antonio within the time acquired by its contract and the general laws of the State, it follows that the privilege

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conferred by that act was neither a renewal of a lost or forfeited right nor the continuance of one existing when the act took effect. The appellant therefore is not excluded by the letter of the statute from the benefits conferred by it."

And upon this contention of the defendant company, adopted by the supreme court of the State, the judgment in favor of the State rendered in the district court of Val Verde county for — acres of land was reversed, except as to so much of said lands so granted as was based upon certificates issued for sidings to said company to the amount of 87,040 acres; the title to the balance of said — acres of land was quie'ed in defendant company.

Plaintiff says that by reason of the facts set up defendant company is now estopped from setting up that it was, prior to the passage of the act of August 15, 1876, entitled to certificates for land for the construction of that portion of its road from Columbus to the Guadalupe River bridge, and of this it asks the judgment of this court.

C. A. CULBERSON,
Att'y General, and
R. L. BATTS,
Assistant, Att'ys for Plaintiff.

(Filed this the 13th day of Sept., 1893.
C. E. WAY,
Clerk District Court, Brewster Co., Texas.)

Defendant's First Supplemental Answer.

Filed Sept. 13, 1893.

In the District Court of Brewster County, Texas.

THE STATE OF TEXAS
vs.
G., H. & S. A. R'Y Co. } # 101.

88 And now comes defendant and excepts to that part of plaintiff's supplemental petition filed this day which undertakes to set up by way of estoppel to defendant's right to the land sued for the decision of the Supreme Court in the case of G. H. & S. A. R'y Co. *vs.* State, reported in 81 Tex. Reports:

1st. Because the same is wholly insufficient in law, and of this:

2nd. Because the same does not show that all the matters, claims, etc., of the defendant company for lands under other series and issues and other laws of the State, general and special, were sued for and involved in that suit were pleaded and submitted for decision in that case so as to be binding on the parties at issue and settled the controversy between the parties thereto, so that the same operates as an estoppel.

3rd. Because the said plea shows upon its face that there was nothing more involved in the decision than the argument of counsel and opinion of the court construing the law applicable to the

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facts in that case, which do not appear to be same facts applicable here, and the plea is wholly insufficient to estop defendant in any claim it may have to land by reason of the law in force at the time the certificates were issued and lands patented.

Wherefore, &c., the plea of estoppel shows that it sets up the contention of counsel in another case and opinion of the Supreme Court in the case it was considering, but that does not show that the land certificates were issued at same time, were of the same series, or were in any way *res adjudicata* or binding upon it in this case, and is insufficient in law.

Wherefore the plea shows upon its face that the same were conclusions of law of the pleader and is not such a plea as is known to the law.

Wherefore and for the reasons given, the said plea so being insufficient, defendant prays that the same be stricken out.

T. D. COBBS,
Att'y for Defendant.

Should said pleas be overruled, then the defendant denies the same fully and denies that defendant is estopped by the opinion of the court in said case upon the matters and issues presented here and involved in this suit.

And of this, etc.,

T. D. COBBS.

(Filed Sept. 13, 1893.
C. E. WAY, *Clerk.*)

Final Judgment.

In the District Court of Brewster County, State of Texas.

THE STATE OF TEXAS
vs.
THE GALVESTON, HARRISBURG AND SAN ANTONIO RAILWAY COMPANY.

On the 13th day of September, 1893, came on to be heard the above-stated cause for trial, and the defendant thereupon presented plea, motion, and protest against this court proceeding further with the trial of said cause, alleging that the same had been properly removed to the United States circuit court at El Paso for the western district of Texas; which plea, motion, and protest was by the court overruled, and to which ruling of the court the defendant in open court excepted and tendered its bill of exception No. 1, which was approved by the court.

Then came on to be heard defendant's general demurrers to plaintiff's petition, which was overruled by the court; to which ruling by the court — then and there excepted. Then came on to be heard the defendant's plea that there was a non-joinder of necessary parties, and that George F. Stone was a necessary party to this suit, which plea was overruled by the court; to which ruling of the court

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the defendant then and there excepted. Then came on to be heard the demurrer of defendant to plaintiff's supplemental petition, the decision of the Supreme Court, and the contention of counsel for defendant in said court as an estoppel against defendant's contention here, which demurrer was sustained by the court and the plea stricken out. Whereupon the plaintiff excepted to the ruling of the court.

Whereupon all issues of law upon pleas and demurrers having been submitted to the court and having been ruled upon, except plaintiff's exceptions, the parties thereupon announced ready
90 for trial on the merits, the said plaintiff appearing and being represented by R. L. Batts, assistant attorney general of Texas, and said defendant appearing and being represented by T. D. Cobbs; whereupon trial of the cause upon the law and evidence was begun; and the evidence being submitted and the argument of counsel being heard, and it appearing to the court that the land certificates hereinafter mentioned were, together with other certificates, issued by the commissioner of the general land office of Texas to the defendant company for the construction of those parts of its road hereinafter indicated, and that they were issued without warrant or authority of law, it was the opinion of the court that judgment should be rendered for plaintiff, The State of Texas, and on this the 14th day of September, A. D. 1893, judgment was rendered in behalf of plaintiff for the entire amount of the land herein sued for, and otherwise as prayed for by plaintiff; and it is here now ordered, adjudged, and decreed by the court that plaintiff, The State of Texas, do have and recover of defendant, The Galveston, Harrisburg & San Antonio Railway Company, the following-described thirteen hundred and eighty-three sections, tracts, or parcels of land, containing in the aggregate eight hundred and seventy-nine thousand and seventy-eight and one-twentieth ($879{,}078\frac{1}{20}$) acres of land, situated in the counties of Jeff Davis, Presidio, Brewster, Kimble, San Saba, Val Verde, Crockett, McCulloch, Pecos, Buchel, Reeves, Schleicher, Sutton, and Zavalla, in the State of Texas, and described by the number of certificate, amount in acres, date of issuance of each certificate, county of location, survey number, block number, abstract number, whether or not patented, and when patented, as indicated by the following tables, in which the certificate number of each certificate issued is placed in a column at the head of top of which are the words "No. of certificate;" in which the number of acres or amount in acres is placed in a column at the head of which is the word "acres;" in which the date when each of the several certificates were issued is placed in a column at the top or head of which are the words "when issued;" in which the county in which each of the several tracts were located is placed in a column at the head of which are the words "when located;" in which of the said several surveys are patented the date of the patent is given in a column at the head or top of which are the words "when patented," and if said surveys are not patented, then in the same column is the word "unpat-
91 ented;" in which the survey number of said several surveys is given in a column marked "survey No.;" in which the

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block number is in a column marked "block;" in which the abstract number of the several surveys is placed in a column marked "abstract No.," and in which, when the land is patented, the name or initial of the patentee is given in a column at the head or top of which is the word "patentee:"

Number of certificate.	Acres.	When issued.	Where located.	Unpatented sur. No.	Block.	Abst. No.
1/1	640	Jan'y 9, 1874	Jeff Davis county	" 1	1	184
1/2	"	"	Presidio "	" 3	1	99
1/3	"	"	" "	" 5	1	100
1/4	"	"	" "	" 7	1	101
1/5	"	"	" "	" 9	1	102
1/6	"	"	" "	" 11	1	103
1/7	"	"	" "	" 1	2	104
1/8	"	"	Jeff Davis county	" 3	"	185
1/9	"	"	"	" 5	"	186
1/10	"	"	"	" 7	"	187
1/11	"	"	"	" 9	"	188
1/12	"	"	"	" 11	"	189
1/13	"	"	"	" 13	"	190
1/14	"	"	"	" 15	"	191
1/15	"	"	"	" 17	"	192
1/16	"	"	"	" 19	"	193
1/17	"	"	"	" 21	"	194
1/18	"	"	"	" 23	"	195
1/19	"	"	"	" 25	"	196
1/20	"	"	"	" 27	"	197
1/21	"	"	"	" 29	"	198
1/22	"	"	"	" 1	3	261
1/23	"	"	"	" 3	"	262
1/24	"	"	"	" 5	"	263
1/25	"	"	"	" 7	"	264
1/26	"	"	"	" 9	"	265
1/27	"	"	"	" 11	"	266
1/28	"	"	"	" 13	"	267
92						
1/29	"	"	"	" 15	"	268
1/30	"	"	"	" 17	"	269
1/31	"	"	"	" 19	"	270
1/32	"	"	"	" 21	"	271
1/33	"	"	"	" 23	"	272
1/34	"	"	"	" 25	"	273
1/35	"	"	"	" 27	"	274
1/36	"	"	"	" 29	"	275
1/37	"	"	"	" 31	"	276
1/38	"	"	"	" 33	"	277
1/39	"	"	"	" 35	"	278
1/40	"	"	"	" 37	"	279
1/41	"	"	"	" 39	"	280
1/42	"	"	"	" 41	"	281
1/43	"	"	"	" 43	"	282
1/44	"	"	"	" 45	"	283
1/45	"	"	"	" 47	"	284
1/46	"	"	"	" 49	"	285
1/47	"	"	"	" 51	"	286
1/48	"	"	"	" 53	"	287

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Number of certificate.	Acres.	When issued.	Where located.	Patented.	Sur. No.	Block.	Abst. No.
1/116	640	Jan'y 9, 1874	Jeff Davis county..	June 7, 1876	189	3	390
1/117	"	"	" " ..	"	191	"	391
1/118	"	"	" " ..	"	193	"	392
1/119	"	"	" " ..	"	195	"	393
1/120	"	"	" " ..	"	197	"	396
1/122	"	"	" " ..	16,	201	"	396
1/124	"	"	" " ..	"	205	"	398
1/126	"	"	" " ..	15,	209	"	400
1/128	"	"	" " ..	"	213	"	402
1/130	"	"	" " ..	14,	217	"	404
1/132	"	"	" " ..	"	221	"	406
1/134	"	"	" " ..	"	225	"	408
1/140	"	"	" " ..	"	237	"	414
1/141	"	"	" " ..	20,	239	"	415
1/142	"	"	" " ..	"	241	"	416
1/143	"	"	" " ..	"	243	"	417
1/144	"	"	" " ..	19,	245	"	418
93							
1/145	"	"	" " ..	"	247	"	419
1/146	"	"	" " ..	"	249	"	420
1/147	"	"	" " ..	"	251	"	421
1/148	"	"	" " ..	"	253	"	422
1/149	"	"	" " ..	"	255	"	423
1/150	"	"	" " ..	"	257	"	424
1/151	"	"	" " ..	20,	259	"	425
1/152	"	"	" " ..	"	261	"	426
1/153	"	"	" " ..	"	263	"	427
1/154	"	"	1/10 Jeff Davis " 9/10 El Paso "	"	265	"	428-2648
1/155	"	"	Presidio " ..	"	267	"	252
1/156	"	"	1/4 Jeff Davis " 3/4 El Paso "	"	269	"	429-2649
1/157	"	"	Jeff Davis " ..	"	271	"	430
1/158	"	"	" " ..	"	273	"	431
1/159	"	"	" " ..	"	275	"	432
1/160	"	"	" " ..	June 20, 1876	277	"	433
1/161	"	"	" " ..	Unpatented..	279	"	434
1/162	"	"	" " ..	" ..	281	"	435
1/163	"	"	" " ..	" ..	283	"	436
1/164	"	"	" " ..	" ..	285	"	437
1/165	"	"	" " ..	" ..	287	"	438
1/166	"	"	" " ..	" ..	289	"	439
1/167	"	"	" " ..	" ..	291	"	181
1/168	"	"	" " ..	" ..	293	"	182
1/169	"	"	" " ..	" ..	295	"	183
1/170	"	"	" " ..	" ..	1	4	297
1/171	"	"	" " ..	" ..	3	"	298
1/172	"	"	" " ..	" ..	5	"	299
1/173	"	"	" " ..	" ..	7	"	300
1/174	"	"	" " ..	" ..	9	"	301
1/175	"	"	" " ..	" ..	11	"	302
1/176	"	"	" " ..	" ..	13	"	303
1/177	"	"	" " ..	" ..	15	"	304
1/178	"	"	" " ..	" ..	17	"	305
1/179	"	"	" " ..	" ..	19	"	306
1/180	"	"	" " ..	" ..	21	"	307
1/181	"	"	" " ..	" ..	23	"	308

Number of certificate.	Acres.	When issued.	Where located.	Unpatented.	Sur. No.	Block.	Abst. No.
94							
1/182	640	Jan'y 9, 1874	Jeff Davis county..	Unpatented..	25	4	309
1/183	"	"	" ..	" ..	27	"	310
1/184	"	"	" ..	" ..	29	"	311
1/185	"	"	" ..	" ..	31	"	312
1/186	"	"	" ..	" ..	33	"	313
1/187	"	"	" ..	" ..	35	"	314
1/188	"	"	Presidio county...	" ..	37	"	285
1/189	"	"	" ...	" ..	39	"	286
1/190	"	"	" ...	" ..	41	"	287
1/191	"	"	"	" ..	43	"	288
1/192	"	"	"	" ..	45	"	289
1/193	"	"	"	" ..	47	"	290
1/194	"	"	"	" ..	49	"	291
1/195	"	"	"	" ..	51	"	292
1/196	"	"	"	" ..	53	"	293
1/197	"	"	"	" ..	55	"	294
1/198	"	"	"	" ..	57	"	295
1/199	"	"	"	" ..	59	"	296
1/200	"	"	"	" ..	61	"	297
1/201	"	"	"	" ..	63	"	298
1/202	"	"	"	" ..	65	"	299
1/203	"	"	"	" ..	67	"	300
1/204	"	"	"	" ..	69	"	301
1/205	"	"	"	" ..	71	"	302
1/206	"	"	"	" ..	73	"	303
1/207	"	"	"	" ..	75	"	304
1/208	"	"	"	" ..	77	"	305
1/209	"	"	"	" ..	79	"	306
1/210	"	"	"	" ..	81	"	307
1/211	"	"	"	" ..	83	"	308
1/212	"	"	"	" ..	85	"	309
1/213	"	"	"	" ..	87	"	310
1/214	"	"	"	" ..	89	"	311
1/215	"	"	"	" ..	91	"	312
1/216	"	"	"	" ..	93	"	313
1/217	"	"	"	" ..	95	"	314
1/218	"	"	"	" ..	97	"	315
95							
1/219	"	"	"	" ..	99	"	316
1/220	"	"	"	" ..	101	"	317
1/221	"	"	"	" ..	103	"	318
1/222	"	"	"	" ..	105	"	319
1/223	"	"	"	" ..	107	"	320
1/224	"	"	"	" ..	109	"	321
1/225	"	"	"	" ..	111	"	322
1/226	"	"	"	" ..	113	"	323
1/227	"	"	"	" ..	115	"	324
1/228	"	"	"	" ..	117	"	325
1/229	"	"	"	" ..	119	"	326
1/230	"	"	"	" ..	121	"	327
1/231	"	"	"	" ..	123	"	328
1/232	"	"	"	" ..	125	"	329
1/233	"	"	"	" ..	127	"	330
1/234	"	"	"	" ..	129	"	331
1/235	"	"	"	" ..	131	"	332
1/236	"	"	"	" ..	133	"	333
1/237	"	"	"	" ..	135	"	334
1/238	"	"	"	" ..	137	"	335
1/239	"	"	"	" ..	139	"	336

Number of certificate.	Acres.	When issued.	Where located.	Patented.	Sur. No.	Block.	Abst. No.
1/240	640	Jan'y 9, 1874	Presidio county ...	Jan'y 10, 1890	1	5	337
1/241	"	"	"	"	3	"	338
1/242	"	"	"	"	5	"	339
1/243	"	"	"	"	7	"	340
1/244	"	"	"	"	9	"	341
1/245	"	"	" ..	"	11	"	342
1/246	"	"	"	"	13	"	343
1/247	"	"	" ..	Unpatented..	15	"	344
1/248	"	"	" ...	"	17	"	345
				Patented.			
1/249	"	"	"	Jan. 10, 1890	19	"	346
1/250	"	"	"	"	21	"	347
1/251	"	"	"	"	23	"	348
1/252	"	"	"	11,	25	"	349
1/253	"	"	"	"	27	"	350
1/254	"	"	"	"	29	"	351
1/255	"	"	"	"	31	"	352
1/256	"	"	"	"	33	"	353
96							
1/257	"	"	"	"	35	"	354
1/258	"	"	"	"	37	"	355
1/259	"	"	" ...	"	39	"	356
1/260	"	"	"	"	41	"	357
1/261	"	"	" ...	"	43	"	358
1/262	"	"	" ...	"	45	"	359
1/263	"	"	"	"	47	"	360
1/264	"	"	"	"	49	"	361
1/265	"	"	"	"	51	"	362
1/266	"	"	" ...	"	53	"	363
1/267	"	"	"	"	55	"	364
1/268	"	"	"	"	57	"	365
1/269	"	"	"	3,	59	"	366
1/270	"	"	"	"	61	"	367
1/271	"	"	" ...	3,	63	"	368
1/272	"	"	"	"	65	"	369
1/273	"	"	"	4,	67	"	370
1/274	"	"	"	"	69	"	371
1/275	"	"	"	"	71	"	372
1/276	"	"	"	"	73	"	373
1/277	"	"	"	"	75	"	374
1/278	"	"	" ...	"	77	"	375
1/279	"	"	"	"	79	"	376
1/280	"	"	"	"	81	"	377
1/281	"	"	"	"	83	"	378
1/282	"	"	" ...	"	85	"	379
1/283	"	"	"	"	87	"	380
1/284	"	"	"	6,	89	"	381
1/285	"	"	" ...	"	91	"	382
1/286	"	"	"	"	93	"	383
1/287	"	"	"	"	95	"	384
1/288	"	"	" ...	"	97	"	385
1/289	"	"	" ...	"	99	"	386
1/290	"	"	"	"	101	"	387
1/291	"	"	"	"	103	"	388
1/292	"	"	" ...	"	105	"	389
1/293	"	"	"	"	107	"	390
1/294	"	"	"	"	109	"	391

Number of certificate.	Acres.	When issued.	Where located.	Patented.	Sur. No.	Block.	Abst. No.
97							
1/295	640	Jan'y 9, 1874	Presidio county....	Jan. 6, 1890	111	5	392
1/296	"	"	"	"	113	"	393
1/297	"	"	"	"	115	"	394
1/298	"	"	"	7,	117	"	395
1/299	"	"	"	"	119	"	396
1/320	250¾	"	"	14,	1	7	417
1/321	638 9/10	"	"	"	3	"	418
1/322	636	"	"	"	5	"	419
1/323	633 6/10	"	"	"	7	"	420
1/324	631 2/10	"	"	"	9	"	421
1/325	628 9/10	"	"	"	11	"	422
1/326	626 6/10	"	"	16,	13	"	423
1/327	640	"	"	"	15	"	424
1/328	"	"	"	"	17	"	425
1/329	"	"	"	"	19	"	426
1/330	"	"	"	"	21	"	427
1/331	"	"	"	"	23	"	428
1/332	"	"	"	"	25	"	429
1/333	250¼	"	"	14,	27	"	430
1/334	250¾	"	"	"	29	"	431
1/335	640	"	"	"	31	"	432
1/336	"	"	"	16,	33	"	433
1/337	"	"	"	17,	35	"	434
1/338	"	"	"	16,	37	"	435
1/339	"	"	"	17,	39	"	436
1/340	"	"	"	14,	41	"	437
1/341	"	"	"	"	43	"	438
1/342	"	"	"	15,	45	"	439
1/343	"	"	"	"	47	"	440
1/344	"	"	"	"	49	"	44[illegible]
1/345	"	"	"	"	51	"	44[illegible]
1/346	"	"	"	"	53	"	443
1/347	250¾	"	"	"	55	"	444
1/348	250¼	"	"	16,	57	"	445
1/349	640	"	"	16,	59	"	446
1/350	"	"	"	17,	61	"	447
1/351	"	"	"	"	63	"	448
98							
1/352	"	"	"	16,	65	"	449
1/353	"	"	"	"	67	"	450
1/354	"	"	"	"	69	"	451
1/355	"	"	"	"	71	"	452
1/356	"	"	"	"	73	"	453
1/357	"	"	"	"	75	"	454
1/358	"	"	"	"	77	"	455
1/359	"	"	"	"	79	"	456
1/360	"	"	"	"	81	"	457
1/361	403	"	"	"	83	"	458
1/362	501	"	"	"	85	"	459
1/363	346	"	"	"	87	"	460
1/364	243¾	"	"	13,	89	"	461
1/365	640	"	"	"	91	"	462
1/366	"	"	"	"	93	"	463
1/367	"	"	"	"	95	"	464
1/368	"	"	"	14,	97	"	465
1/369	"	"	"	"	99	"	466

Number of certificate.	Acres.	When issued.	Where located.	Patented.	Sur. No.	Block.	Abst. No.
1/370	640	Jan. 9, 1874	Presidio county...	Jan. 14, 1890	101	7	467
1/371	"	"	"	"	103	"	468
1/372	"	"	"	7,	105	"	469
1/373	"	"	"	"	107	"	470
1/374	"	"	"	"	109	"	471
1/375	"	"	"	"	111	"	472
1/376	"	"	"	"	113	"	473
1/377	"	"	"	"	115	"	474
1/378	"	"	"	8,	117	"	475
1/379	"	"	"	"	119	"	476
1/380	"	"	"	"	121	"	477
1/381	"	"	"	10,	123	"	478
1/382	"	"	"	"	125	"	479
1/383	"	"	"	11,	127	"	480
1/384	"	"	"	"	129	"	481
1/385	243½	"	"	"	131	"	482
1/386	441 $\frac{6}{10}$	"	"	10,	133	"	483
1/387	446½	"	"	17,	1	8	484
99							
1/388	640	"	"	"	3	"	485
1/389	"	"	"	"	5	"	486
1/390	"	"	"	"	7	"	487
1/391	"	"	"	"	9	"	488
1/392	"	"	"	"	11	"	489
1/393	"	"	"	"	13	"	490
1/394	"	"	"	"	15	"	491
1/395	"	"	"	"	17	"	492
1/396	"	"	"	"	19	"	493
1/397	"	"	"	29,	21	"	494
1/398	"	"	"	12,	23	"	495
1/399	"	"	"	30,	25	"	496
1/400	448 $\frac{8}{10}$	"	"	29,	27	"	497
1/401	451	"	"	31,	29	"	498
1/402	640	"	"	Feb'y 3, 1890	31	"	499
1/403	"	"	"	4,	33	"	500
1/404	"	"	"	"	35	"	501
1/405	"	"	"	"	37	"	502
1/406	"	"	"	"	39	"	503
1/407	"	"	"	Unpatented..	41	"	504
1/408	"	"	"	" ..	43	"	505
1/409	"	"	"	" ..	45	"	506
1/410	"	"	"	" ..	47	"	507
1/411	"	"	"	" ..	49	"	508
1/412	"	"	"	" ..	51	"	509
1/413	"	"	"	" ..	53	"	510
1/414	"	"	"	" ..	55	"	511
1/415	"	"	"	" ..	57	"	512
				Patented.			
1/416	640	July 17, 1874	" ...	Jan. 16, 1890	59	8	513
1/417	453 $\frac{4}{10}$	"	"	"	61	"	514
1/418	274 $\frac{1}{10}$	"	"	"	63	"	515
1/419	640	"	"	"	65	"	516
1/420	"	"	"	"	67	"	517
1/421	"	"	"	"	69	"	518
1/422	"	"	"	"	71	"	519
1/423	"	"	"	"	73	"	520

Number of certificate.	Acres.	When issued.	Where located.	Patented.	Sur. No.	Block.	Abst. No.
100							
1/424	640	July 17, 1874	Presidio county ...	Jan. 17, 1890	75	8	521
1/425	"	"	" ...	"	77	"	522
1/426	"	"	" ...	"	79	"	523
1/427	"	"	" ...	"	81	"	524
1/428	"	"	" ...	16,	83	"	525
1/429	"	"	" ...	"	85	"	526
1/430	"	"	" ...	"	87	"	527
1/431	"	"	" ...	"	89	"	528
1/432	"	"	" ...	17,	91	"	529
1/433	"	"	" ...	"	93	"	530
1/434	"	"	" ...	"	95	"	531
1/435	"	"	" ...	"	97	"	532
1/436	"	"	" ...	"	99	"	533
1/437	"	"	" ...	"	101	"	534
1/438	"	"	" ...	"	103	"	535
1/439	"	"	" ...	"	105	"	536
1/440	"	"	" ...	"	107	"	537
1/441	"	"	" ...	18,	109	"	538
1/442	"	"	" ...	"	111	"	539
1/443	"	"	" ...	"	113	"	540
1/444	"	"	" ...	"	115	"	541
1/445	"	"	" ...	"	117	"	542
1/446	"	"	" ...	"	119	"	543
1/447	"	"	" ...	"	121	"	544
1/448	"	"	" ...	"	123	"	545
1/449	"	"	" ...	"	125	"	546
1/450	"	"	" ...	"	127	"	547
1/451	504	"	" ...	"	129	"	548
1/452	640	"	" ...	"	131	"	549
1/453	"	"	" ...	"	133	"	550
1/454	"	"	" ...	"	135	"	551
1/455	"	"	" ...	"	137	"	552
1/456	"	"	" ...	20,	139	"	553
1/457	"	"	" ...	"	141	"	554
1/458	280 3/10	"	" ...	"	143	"	555
1/459	447 2/10	"	" ...	"	145	"	556
1/460	640	"	" ...	"	147	"	557
101							
1/461	"	"	" ...	"	149	"	558
1/462	"	"	" ...	28,	151	"	559
1/463	"	"	" ...	"	153	"	560
1/464	"	"	" ...	"	155	"	561
1/465	"	"	" ...	"	157	"	562
1/466	"	"	" ...	"	159	"	563
1/467	"	"	" ...	"	161	"	564
1/468	"	"	" ...	"	163	"	565
1/469	"	"	" ...	"	165	"	566
1/470	"	"	" ...	"	167	"	567
1/471	"	"	" ...	"	169	"	568
1/472	"	"	" ...	"	171	"	569
1/473	"	"	" ...	"	173	"	570
1/474	"	"	" ...	"	175	"	571
1/475	"	"	" ...	"	177	"	572
1/476	"	"	" ...	"	179	"	573
1/477	"	"	" ...	"	181	"	574
1/478	"	"	" ...	"	183	"	575
1/479	"	"	" ...	"	185	"	576

Number of certificate.	Acres.	When issued.	Where located.	Patented.	Sur. No.	Block.	Abst. No.
1/480	640	July 17, 1874	Presidio county	Jan. 28, 1890	187	8	577
1/481	"	"	" ...	"	189	"	578
1/482	"	"	"	"	191	"	579
1/483	"	"	" ..	"	193	"	580
1/484	"	"	"	"	195	"	581
1/485	"	"	"	"	197	"	582
1/486	"	"	"	"	199	"	583
1/487	"	"	" ...	"	201	"	584
1/488	"	"	"	"	203	"	585
1/489	"	"	"	"	205	"	586
1/490	"	"	"	"	207	"	587
1/491	"	"	"	"	209	"	588
1/492	"	"	"	"	211	"	589
1/493	"	"	"	"	213	"	590
1/494	"	"	"	"	215	"	591
1/495	"	"	"	"	217	"	592
1/496	"	"	"	"	219	"	593
102							
1/497	"	"	"	"	221	"	594
1/498	"	"	"	"	223	"	595
1/499	"	"	"	"	225	"	596
1/500	"	"	"	"	227	"	597
1/501	"	"	"	"	229	"	598
1/502	"	"	"	"	231	"	599
1/503	"	"	"	"	233	"	600
1/504	"	"	"	"	235	"	601
1/505	"	"	"	"	237	"	602
1/506	"	"	"	"	239	"	603
1/507	"	"	"	"	241	"	604
1/508	"	"	"	"	243	"	605
1/509	"	"	"	"	245	"	606
1/510	"	"	" ...	"	247	"	607
1/511	"	"	" ...	"	249	"	608
1/512	"	"	"	"	251	"	609
1/513	"	"	"	"	253	"	610
1/514	"	"	"	"	255	"	611
1/515	"	"	"	"	257	"	612
1/516	"	"	"	"	259	"	613
1/517	"	"	"	"	261	"	614
1/518	"	"	"	"	263	"	615
1/519	"	"	"	"	265	"	616
1/520	"	"	"	"	267	"	617
1/521	"	"	"	"	269	"	618
1/522	"	"	"	"	271	"	619
1/523	"	"	"	"	273	"	620
1/524	"	"	"	"	275	"	621
1/525	"	"	"	"	277	"	622
1/526	"	"	"	"	279	"	623
1/527	"	"	"	"	281	"	624
1/528	"	"	"	"	283	"	625
1/529	"	"	"	"	285	"	626
1/530	"	"	" ..	"	287	"	627
1/531	"	"	"	"	289	"	628
1/532	"	"	"	"	291	"	629
103							
1/533	"	"	"	"	293	"	630
1/534	"	"	"	"	295	"	631

BLEED THROUG

Number of certificate.	Acres.	When issued.	Where located.	Patented.	Sur. No.	Block.	Abst. No.
1/535	640	July 17, 1874	Presidio county....	Jan. 28, 1890	297	8	632
1/536	"	"	" ..	"	299	"	633
1/537	"	"	"	"	301	"	634
1/538	"	"	" .. .	"	303	"	635
1/539	"	"	" ...	"	305	"	636
1/540	"	"	"	"	307	"	637
1/541	"	"	"	"	309	"	638
1/542	"	"	"	"	311	"	639
1/543	"	"	"	"	313	"	640
1/544	"	"	"	"	315	"	641
1/545	"	"	"	"	317	"	642
1/546	"	"	"	"	319	"	643
1/547	"	"	"	"	321	"	644
1/548	"	"	"	"	323	"	645
1/549	"	"	" ...	"	325	"	646
1/550	"	"	"	"	327	"	647
1/551	"	"	"	"	329	"	648
1/552	"	"	"	"	331	"	649
1/553	"	"	" . .	"	333	"	650
1/554	"	"	"	"	335	"	651
1/555	"	"	"	"	337	"	652
1/556	"	"	"	"	339	"	653
1/557	"	"	"	"	341	"	654
1/558	"	"	"	"	343	"	655
1/559	"	"	"	"	345	"	656
1/560	"	"	" .. .	"	347	"	657
1/561	"	"	" . ..	"	349	"	658
1/562	"	"	"	"	351	"	659
1/563	"	"	"	"	353	"	660
1/564	"	"	"	"	355	"	661
1/565	"	"	"	"	357	"	662
1/566	"	"	"	"	359	"	663
1/567	"	"	" ..	"	361	"	664
1/568	"	"	" ...	"	363	"	665
1/569	"	"	"	"	365	"	666
104							
1/570	"	"	"	"	367	"	667
1/571	"	"	"	"	369	"	668
1/572	"	"	" ...	"	371	"	669
1/573	"	"	"	"	373	"	670
1/574	"	"	" ...	"	375	"	671
1/575	"	"	"	"	377	"	672
1/576	"	"	"	"	379	"	673
1/577	"	"	" ...	"	381	"	674
1/578	"	"	"	"	383	"	675
1/579	"	"	"	"	385	"	676
1/580	"	"	"	"	387	"	677
1/581	"	"	"	"	389	"	678
1/582	"	"	"	"	391	"	679
1/583	"	"	"	"	393	"	680
1/584	"	"	"	"	395	"	681
1/585	"	"	"	"	397	"	682
1/586	"	"	"	"	399	"	683
1/587	"	"	"	"	401	"	684
1/588	"	"	"	"	403	"	685
1/589	"	"	"	"	405	"	686
1/590	"	"	"	"	407	"	687
1/591	"	"	"	"	409	"	688

POOR COPY

Number of certificate.	Acres.	When issued.	Where located.	Patented.	Sur. No.	Block.	Abst. No.
1/592	640	July 17, 1874	Presidio county	Jan. 28, 1890	411	8	689
1/593	"	"	"	"	413	"	690
1/594	"	"	"	"	415	"	691
1/595	"	"	"	"	417	"	692
1/596	"	"	"	"	419	"	693
1/597	"	"	"	"	421	"	694
1/598	"	"	"	"	423	"	695
1/599	"	"	"	"	425	"	696
1/600	"	"	"	"	427	"	697
1/601	"	"	"	"	429	"	698
1/602	"	"	"	"	431	"	699
1/603	"	"	"	"	433	"	700
1/604	"	"	"	"	435	"	701
1/605	"	"	"	"	437	"	702
1/606	"	"	"	"	439	"	703
1/607	"	"	"	"	441	"	704
1/608	"	"	"	"	443	"	705
105							
1/609	"	"	"	"	445	"	706
1/610	"	"	"	"	447	"	707
1/611	"	"	"	"	449	"	708
1/612	"	"	"	"	451	"	709
1/613	"	"	"	"	453	"	710
1/614	"	"	"	"	455	"	711
1/615	"	"	"	"	457	"	712
1/616	"	"	"	"	459	"	713
1/617	"	"	"	"	461	"	714
1/618	"	"	"	"	463	"	715
1/619	"	"	"	"	465	"	716
1/620	"	"	"	"	467	"	717
1/621	"	"	"	"	469	"	718
1/622	"	"	"	"	471	"	719
1/623	"	"	"	"	473	"	720
1/624	"	"	"	"	475	"	721
1/625	"	"	"	"	477	"	722
1/626	"	"	"	"	479	"	723
1/627	"	"	"	"	481	"	724
1/628	"	"	"	"	483	"	725
1/629	"	"	"	"	485	"	726
1/630	"	"	"	"	487	"	727
1/631	"	"	"	"	489	"	728
1/632	"	"	"	"	491	"	729
1/633	"	"	"	"	493	"	730
1/634	"	"	"	"	495	"	731
1/635	"	"	"	"	497	"	732
1/636	"	"	"	"	499	"	733
1/637	"	"	"	"	501	"	734
1/638	"	"	"	"	503	"	735
1/639	"	"	"	"	505	"	736
1/640	"	"	"	"	507	"	737
1/641	"	"	"	"	509	"	738
1/642	"	"	"	"	511	"	739
1/643	"	"	"	"	513	"	740
1/644	"	"	"	"	515	"	741
1/645	"	"	"	"	517	"	742
106							
1/646	"	"	"	"	519	"	743
1/647	"	"	"	"	521	"	744

Number of certificate.	Acres.	When issued.	Where located.	Patented.	Sur. No.	Block.	Abst. No.
1/648	640	July 17, 1874	Presidio county	Jan. 28, 1890	523	8	745
1/649	"	"	" "	"	525	"	746
1/650	"	"	" "	"	527	"	747
1/651	"	"	" "	"	529	"	748
1/652	"	"	Brewster "	"	531	"	490
1/653	"	"	" "	"	533	"	491
1/654	"	"	" "	"	535	"	492
1/655	"	"	" "	"	537	"	493
1/656	"	"	" "	"	539	"	494
1/657	"	"	" "	"	541	"	495
1/658	"	"	" "	"	543	"	496
1/659	"	"	" "	"	545	"	497
1/660	"	"	" "	"	547	"	498
1/661	"	"	" "	"	549	"	499
1/662	"	"	" "	"	551	"	500
1/663	"	"	" "	"	553	"	501
1/664	"	"	" "	"	555	"	502
1/665	"	"	" "	"	557	"	503
1/666	"	"	" "	"	559	"	504
1/667	"	"	" "	"	561	"	505
1/668	"	"	" "	"	563	"	506
1/669	"	"	" "	"	565	"	507
1/670	"	"	" "	"	567	"	508
1/671	"	"	" "	"	569	"	509
1/672	"	"	" "	"	571	"	510
1/673	"	"	" "	"	573	"	511
1/674	"	"	" "	"	575	"	512
1/675	"	"	" "	"	577	"	513
1/676	"	"	" "	"	579	"	514
1/677	"	"	" "	"	581	"	515
1/678	"	"	" "	"	583	"	516
1/679	"	"	" "	"	585	"	517
1/680	"	"	" "	"	587	"	518
1/681	"	"	" "	"	589	"	519
1/682	"	"	" "	"	591	"	520
107							
1/683	"	"	" "	"	593	"	521
1/684	"	"	" "	"	595	"	522
1/685	"	"	" "	"	597	"	523
1/686	"	"	" "	"	599	"	524
1/687	"	"	" "	"	601	"	525
1/688	"	"	" "	"	603	"	526
1/689	"	"	" "	"	1	9	352
1/690	"	"	" "	"	3	"	353
1/691	"	"	" "	"	5	"	354
1/692	"	"	½ Jeff Davis " ½ Brewster "	"	7	"	355
1/693	"	"	Jeff Davis "	"	9	"	200
1/694	"	"	" "	"	11	"	201
1/695	"	"	" "	"	13	"	202
1/696	"	"	" "	"	15	"	203
1/697	"	"	" "	"	17	"	204
1/698	"	"	Brewster "	"	19	"	356
1/699	"	"	" "	"	21	"	357
1/700	"	"	" "	"	23	"	358
1/701	"	"	" "	"	25	"	359
1/702	"	"	" "	"	27	"	360
1/703	"	"	" "	"	29	"	361

Number of certificate.	Acres.	When issued.	Where located.	Patented.	Sur. No.	Block.	Abst. No.
1/704	640	July 17, 1874	Brewster county....	Jan. 28, 1890	31	9	362
1/705	"	"	" "	"	33	"	363
1/706	"	"	" "	"	35	"	364
1/707	"	"	" "	"	37	"	365
1/708	"	"	" "	"	39	"	366
1/709	"	"	" "	"	41	"	367
1/710	"	"	" "	"	43	"	368
1/711	"	"	" "	"	45	"	369
1/712	"	"	" "	"	47	"	370
1/713	"	"	" "	"	49	"	371
1/714	"	"	" "	"	51	"	372
1/715	"	"	" "	"	53	"	373
1/716	"	"	" "	"	55	"	374
1/717	"	"	" "	"	57	"	375
1/718	"	"	½ Brewster " .. / ½ Jeff Davis " ..	"	59	"	376
1/719	"	"	Jeff Davis " ..	"	61	"	206
108							
1/720	"	"	" "	"	62	"	207
1/721	"	"	" "	"	65	"	208
1/722	"	"	" "	"	67	"	209
1/723	"	"	" "	"	69	"	210
1/724	"	"	" "	"	71	"	211
1/725	"	"	" "	"	73	"	212
1/726	"	"	" "	"	75	"	213
1/727	"	"	" "	"	77	"	214
1/728	"	"	" "	"	79	"	215
1/729	"	"	" "	"	81	"	216
1/730	"	"	" " .. / ½ Brewster " ..	"	83	"	145-377
1/731	"	"	Brewster ⅛ " .. / Jeff Davis Co....	"	85	"	578-146
1/732	"	"	Brewster county....	"	87	"	379
1/733	"	"	" "	"	89	"	380
1/734	"	"	" "	"	91	"	381
1/735	"	"	" "	"	93	"	382
1/736	"	"	" "	"	95	"	383
1/737	"	"	" "	"	97	"	384
1/738	"	"	" "	"	99	"	385
1/739	"	"	" "	"	101	"	386
1/740	"	"	" "	"	103	"	387
1/741	"	"	" "	"	105	"	388
1/742	"	"	" "	"	107	"	389
1/743	"	"	" "	"	109	"	390
1/744	"	"	" "	"	111	"	391
1/745	"	"	" "	"	113	"	392
1/746	"	"	" "	"	115	"	393
1/747	"	"	" "	"	117	"	394
1/748	"	"	" "	"	119	"	395
1/749	"	"	" "	"	121	"	396
1/750	"	"	" "	"	123	"	397
1/751	"	"	" "	"	125	"	398
1/752	"	"	" "	"	127	"	399
1/753	"	"	" "	"	129	"	400
1/754	"	"	" "	"	131	"	401
1/755	"	"	Brewster ½ " .. / Jeff Davis Co....	"	133	"	402-147
1/756	"	"	Jeff Davis "	"	135	"	148

BLEED THROU

Number of certificate.	Acres.	When issued.	Where located.	Patented.	Sur. No.	Block.	Abst. No.
109							
1/757	640	July 17, 1874	Jeff Davis county....	Jan. 28, 1890	137	9	149
1/758	"	"	" "	"	139	"	150
1/759	"	"	" "	"	141	"	151
1/760	"	"	" "	"	143	"	152
1/761	"	"	" "	"	145	"	153
1/762	"	"	" "	"	147	"	154
1/763	"	"	" "	"	149	"	155
1/764	"	"	Brewster "	"	151	"	403
1/765	"	"	" "	"	153	"	404
1/766	"	"	" "	"	155	"	405
1/767	"	"	" "	"	157	"	406
1/768	"	"	" "	"	159	"	407
1/769	"	"	" "	"	161	"	408
1/770	"	"	" "	"	163	"	409
1/771	"	"	" "	"	165	"	410
1/772	"	"	" "	"	167	"	411
1/773	"	"	" "	"	169	"	412
1/774	"	"	" "	"	171	"	413
1/775	"	"	" "	"	173	"	414
1/776	"	"	" "	"	175	"	415
1/777	"	"	" "	"	177	"	416
1/778	"	"	" "	"	179	"	417
1/779	"	"	" "	"	181	"	418
1/780	"	"	" "	"	183	"	419
1/781	"	"	" "	"	185	"	420
1/782	"	"	" "	"	187	"	421
1/783	"	"	" "	"	189	"	422
1/784	"	"	" "	"	191	"	423
1/785	"	"	" "	"	193	"	424
1/786	"	"	" "	"	195	"	425
1/787	"	"	" "	"	197	"	426
1/788	"	"	" "	"	199	"	427
1/789	"	"	" "	"	201	"	428
1/790	"	"	" "	"	203	"	429
1/791	"	"	" "	"	205	"	430
1/792	"	"	" "	"	207	"	431
1/793	"	"	" "	"	209	"	432
1/794	"	"	" "	"	211	"	433
110							
1/795	"	"	Jeff Davis .. / Brewster " ..	"	213	"	434-156
1/796	"	"	Jeff Davis "	"	215	"	157
1/797	"	"	" "	"	217	"	158
1/798	"	"	" "	"	219	"	159
1/799	"	"	" "	"	221	"	160
1/800	"	"	" "	"	223	"	161
1/801	"	"	Brewster "	"	1	10	276
1/802	"	"	" "	"	3	"	277
1/803	"	"	" "	"	5	"	278
1/804	"	"	" "	"	7	"	279
1/805	"	"	" "	"	9	"	280
1/806	"	"	" "	"	11	"	281
1/807	"	"	" "	"	13	"	282
1/808	"	"	" "	"	15	"	283
1/809	"	"	" "	"	17	"	284
1/810	"	"	" "	"	19	"	285

POOR COPY

Number of certificate.	Acres.	When issued.	Where located.	Patented.	Sur. No.	Block.	Abst. No.
1/811	640	July 17, 1874	Brewster county	Jan. 28, 1890	21	10	286
1/812	"	"	" "	"	23	"	287
1/813	"	"	Kimble "	Sep. 9, 1876	1	E	206
1/820	"	"	San Saba "	"	1	....	500
1/831	"	"	Val Verde "	Unpatented..	15	A2	882
1/835	"	"	Crockett "	" ..	49	"	1806
1/840	"	"	" " ...	" ..	51	"	1807
1/843	"	"	" "	" ..	53	"	1808
1/846	"	"	" "	" ..	55	"	1809
1/851	"	"	McCulloch "	" ..	47	....	426
1/855	"	"	Kimble " ...	Jan'y 13, 1877	15	G	214
1/858	"	"	Pecos " ...	Unpatented..	1	A2	1944
859	640	May 17, 1875	Brewster " ...	" ..	25	10	288
860	"	"	" "	" ..	27	"	289
861	"	"	" "	" ..	29	"	290
862	"	"	" " ...	" ..	31	"	291
863	"	"	1/2 Brewster " .. / 1/2 Jeff Davis Co...	" ..	33	"	292-162
864	"	"	" "	" ..	35	"	163
865	"	"	" "	" ..	37	"	164
866	"	"	" "	" ..	39	"	165
111							
867	"	"	" " ...	" ..	41	"	166
868	"	"	" "	" ..	43	"	167
869	"	"	1/10 Jeff Davis " .. / 1/10 Pecos " ..	" ..	45	"	168-4681
870	"	"	Jeff Davis "	" ..	47	"	169
871	"	"	" "	" ..	49	"	170
872	"	"	" "	" ..	51	"	171
873	"	"	" "	" ..	53	"	172
874	"	"	1/8 Brewster " .. / 7/8 Jeff Davis " ..	" ..	55	"	173-293
875	"	"	Brewster "	" ..	57	"	294
876	"	"	" "	" ..	59	"	295
877	"	"	" "	" ..	61	"	296
878	"	"	" " ...	" ..	63	"	297
879	"	"	" " ...	" ..	65	"	298
880	"	"	" "	" ..	67	"	299
881	"	"	" "	" ..	69	"	300
882	"	"	" " ...	" ..	71	"	301
883	"	"	" "	" ..	73	"	302
884	"	"	" "	" ..	75	"	303
885	"	"	" "	" ..	77	"	304
886	"	"	" "	" ..	79	"	305
887	"	"	" "	" ..	81	"	306
888	"	"	" "	" ..	83	"	307
889	"	"	" "	" ..	85	"	308
890	"	"	" "	" ..	87	"	309
891	"	"	" "	" ..	89	"	310
892	"	"	" "	" ..	91	"	311
893	"	"	" "	" ..	93	"	312
894	"	"	" "	" ..	95	"	313
895	"	"	" "	" ..	97	"	314
896	"	"	" "	" ..	99	"	315
897	"	"	" "	" ..	101	"	316
898	"	"	" "	" ..	103	"	317
899	"	"	" "	" ..	105	"	318
900	"	"	" "	" ..	107	"	319
901	"	"	" "	" ..	109	"	320
902	"	"	" "	" ..	111	"	321

BLEED THROUGH

Number of certificate.	Acres.	When issued.	Where located.	Unpatented.	Sur. No.	Block.	Abst. No.
112							
903	640	May 17, 1875	Brewster county	Unpatented..	113	10	322
904	"	"	" "	" ..	115	"	323
905	"	"	½ Brewster " .. } ½ Jeff Davis " .. }	" ..	117	"	324–174
906	"	"	⅗ Brewster " .. } ⅖ Jeff Davis " .. }	" ..	119	"	325–175
907	"	"	½ Pecos " .. } ½ Jeff Davis " .. }	" ..	121	"	176–4682
908	"	"	Pecos "	" ..	123	"	4420
909	"	"	" "	" ..	125	"	4421
910	"	"	" "	" ..	127	"	4422
911	"	"	" "	" ..	129	"	4423
912	"	"	" "	" ..	131	"	4424
913	"	"	½ Brewster " .. } ½ Pecos " .. }	" ..	133	"	326–4679
914	"	"	⅔ Brewster " .. } ⅓ Pecos " .. }	" ..	135	"	327–4680
915	"	"	Brewster "	" ..	137	"	328
916	"	"	" "	" ..	139	"	329
917	"	"	" "	" ..	141	"	330
918	"	"	" "	" ..	143	"	331
919	"	"	" "	" ..	145	"	332
920	"	"	" "	" ..	147	"	333
921	"	"	" "	" ..	149	"	334
922	"	"	" "	" ..	151	"	335
923	"	"	" "	" ..	153	"	336
924	"	"	" "	" ..	155	"	337
925	"	"	" "	" ..	157	"	338
926	"	"	" "	" ..	159	"	339
927	"	"	" "	" ..	161	"	340
928	"	"	" "	" ..	163	"	341
929	"	"	" "	" ..	165	"	342
930	"	"	" "	" ..	167	"	343
931	"	"	" "	" ..	169	"	1404
932	"	"	" "	" ..	171	"	344
933	"	"	" "	" ..	173	"	1405
934	"	"	" "	" ..	175	"	345
935	"	"	" "	" ..	177	"	1406
936	"	"	" "	" ..	179	"	346
937	"	"	" "	" ..	181	"	1407
938	"	"	" "	" ..	183	"	347
113							
939	"	"	" "	" ..	185	"	1408
940	"	"	" "	" ..	187	"	348
941	"	"	" "	" ..	189	"	1409
942	"	"	" "	" ..	191	"	349
943	"	"	" "	" ..	193	"	1410
944	"	"	" "	" ..	195	"	350
945	"	"	" "	" ..	197	"	1411
946	"	"	" "	" ..	199	"	351
947	"	"	Pecos "	" ..	201	"	4426
948	"	"	Pecos "	" ..	203	"	4427
949	"	"	" "	" ..	205	"	4428
950	"	"	" "	" ..	207	"	4429
951	"	"	" "	" ..	209	"	4430
952	"	"	" "	" ..	211	"	4431

Number of certificate.	Acres.	When issued.	Where located.	Unpatented.	Sur. No.	Block.	Abst. No.
953	640	May 17, 1875	Pecos county...	Unpatented..	213	10	4432
954	"	"	" "	" ..	215	"	4433
955	"	"	" "	" ..	217	"	4434
956	"	"	" "	" ..	219	"	4435
957	"	"	" "	" ..	221	"	4436
958	"	"	" "	" ..	223	"	4437
959	"	"	" "	" ..	225	"	4438
960	"	"	" "	" ..	227	"	4439
961	"	"	" "	" ..	229	"	4440
962	"	"	" "	" ..	231	"	4441
963	"	"	Buchel " .. / Brewster " ..	" ..	233	"	321-1412
964	"	"	Buchel " ...	" ..	235	"	322
965	"	"	Buchel " .. / Brewster " ..	" ..	237	"	323-1413
966	"	"	Buchel "	" ..	239	"	324
967	"	"	Buchel " .. / Brewster " ..	" ..	241	"	325-1414
968	"	"	Buchel "	" ..	243	"	326
969	"	"	Buchel " .. / Brewster " ..	" ..	245	"	327-1399
970	"	"	Buchel "	" ..	247	"	328
971	"	"	Buchel " .. / Brewster " ..	" ..	249	"	329-1400
972	"	"	Buchel "	" ..	251	"	330
973	"	"	Buchel " .. / Brewster " ..	" ..	253	"	331-1401
974	"	"	Buchel "	" ..	255	"	332
975	"	"	Buchel " .. / Brewster " ..	" ..	257	"	333-1402
114							
976	"	"	Buchel " .. / Brewster " ..	" ..	259	"	334-1403
977	"	"	Buchel " ...	" ..	261	"	335
978	"	"	" " ...	" ..	263	"	336
979	"	"	" "	" ..	265	"	337
980	"	"	" "	" ..	267	"	338
981	"	"	" " ...	" ..	269	"	339
982	"	"	" "	" ..	271	"	340
983	"	"	" "	" ..	273	"	341
984	"	"	" "	" ..	275	"	342
985	"	"	" "	" ..	277	"	343
986	"	"	" "	" ..	279	"	344
987	"	"	" "	" ..	281	"	345
988	"	"	" "	" ..	283	"	346
989	"	"	" "	" ..	285	"	347
990	"	"	" "	" ..	287	"	348
991	"	"	" " ...	" ..	289	"	349
992	"	"	" "	" ..	291	"	350
#993	"	"	Buchel " .. / Pecos " ..	" ..	293	"	351-4673
#994	"	"	Pecos " .. / Buchel " ..	" ..	295	"	352-4674
995	"	"	Pecos " .. / Buchel " ..	" ..	297	"	353-4675
996	"	"	Pecos "	" ..	299	"	4442
997	"	"	" " ...	" ..	301	"	4443

BLEED THROUGH

Number of certificate.	Acres.	When issued.	Where located.	Unpatented.	Sur. No.	Block.	Abst. No.
998	640	May 17, 1875	Pecos county ...	Unpatented..	303	10	4444
999	"	"	" " ...	" ..	305	"	4445
1000	"	"	" "	" ..	307	"	4446
1001	"	"	" " ...	" ..	309	"	4447
1002	"	"	" "	" ..	311	"	4448
1003	"	"	" "	" ..	313	"	4449
1004	"	"	" "	" ..	315	"	4450
1005	"	"	" "	" ..	1	11	4451
1006	"	"	" " ...	" ..	3	"	4452
1007	"	"	" "	" ..	5	"	4453
1008	"	"	" "	" ..	7	"	4454
1009	"	"	Jeff Davis " .. .	" ..	9	"	177
1010	"	"	" "	" ..	11	"	178
115							
1011	"	"	" "	" ..	13	"	179
1012	"	"	" "	" ..	15	"	180
1013	"	"	" "	" ..	17	"	217
1014	"	"	" "	" ..	19	"	218
1015	"	"	" "	" ..	21	"	219
1016	"	"	" "	" ..	23	"	220
1017	"	"	" "	" ..	25	"	221
1018	"	"	" " ...	" ..	27	"	222
1019	"	"	" "	" ..	29	"	223
1020	"	"	" " ...	" ..	31	"	224
1021	"	"	" "	" ..	33	"	225
1022	"	"	" "	" ..	35	"	226
1023	"	"	" " ...	" ..	37	"	227
1024	"	"	½ Presidio " .. / ½ Pecos " ..	" ..	39	"	1075-4455
1025	"	"	Pecos " ...	" ..	41	"	4456
1026	"	"	" "	" ..	43	"	4457
1027	"	"	" "	" ..	45	"	4458
1028	"	"	" "	" ..	47	"	4459
1029	"	"	" "	" ..	49	"	4460
1030	"	"	" " ...	" ..	51	"	4461
1031	"	"	" "	" ..	53	"	4462
1032	"	"	" "	" ..	55	"	4463
1033	"	"	Jeff Davis "	" ..	57	"	228
1034	"	"	" "	" ..	59	"	229
1035	"	"	" "	" ..	61	"	230
1036	"	"	" "	" ..	63	"	231
1037	"	"	" "	" .	65	"	232
1038	"	"	" "	" ..	67	"	233
1039	"	"	" "	" ..	69	"	234
1040	"	"	" "	" ..	71	"	235
1041	"	"	" "	" ..	73	"	236
1042	"	"	" "	" ..	75	"	237
1043	"	"	" "	" ..	77	"	238
1044	"	"	" " ...	" ..	79	"	239
1045	"	"	½ Presidio " .. / ½ Pecos " ..	" ..	81	"	1096-4464
116							
1046	"	"	Pecos "	" ..	83	"	4465
1047	"	"	" "	" ..	85	"	4466
1048	"	"	" "	" ..	87	"	4467
1049	"	"	" "	" ..	89	"	4468
1050	"	"	" "	" ..	91	"	4469

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Number of certificate.	Acres.	When issued.	Where located.	Unpatented.	Sur. No.	Block.	Abst. No.
1051	640	May 17, 1875	Pecos county....	Unpatented..	93	11	4470
1052	"	"	" "	" ..	95	"	4471
1053	"	"	" "	" ..	97	"	4472
1054	"	"	" "	" ..	99	"	4473
1055	"	"	" "	" ..	101	"	4474
1056	"	"	7/10 Reeves " .. / 2/10 Pecos " .. / 1/10 Presidio " ..	" ..	103	"	250-4457-1107
1057	"	"	Jeff Davis "	" ..	105	"	240
1058	"	"	" "	" ..	107	"	241
1059	"	"	" "	" ..	109	"	242
1060	"	"	" "	" ..	111	"	243
1061	"	"	" "	" ..	113	"	244
1062	"	"	" "	" ..	115	"	245
1063	"	"	" "	" ..	117	"	246
1064	"	"	" "	" ..	119	"	247
1065	"	"	" "	" ..	121	"	248
1066	"	"	1/5 Reeves " .. / 4/5 Jeff Davis " ..	" ..	123	"	249-251
1067	"	"	Reeves "	" ..	125	"	252
1068	"	"	3/4 Reeves " .. / 1/4 Pecos " ..	" ..	127	"	253-4578
1069	"	"	Pecos "	" ..	129	"	4475
1070	"	"	" "	" ..	131	"	4476
1071	"	"	" "	" ..	133	"	4477
1072	"	"	" "	" ..	135	"	4478
1073	"	"	" "	" ..	137	"	4479
1074	"	"	" "	" ..	139	"	4480
1075	"	"	" "	" ..	141	"	4481
1076	"	"	" "	" ..	143	"	4482
1077	"	"	" "	" ..	145	"	4405
1078	"	"	Reeves "	" ..	147	"	254
1079	"	"	" "	" ..	149	"	255
1080	"	"	" "	" ..	151	"	256
117							
1081	"	"	1/4 Reeves " .. / 3/4 Jeff Davis " ..	" ..	153	"	257-250
1082	"	"	Jeff Davis "	" ..	155	"	251
1083	"	"	" "	" ..	157	"	252
1084	"	"	" "	" ..	159	"	253
1085	"	"	" "	" ..	161	"	254
1086	"	"	" "	" ..	163	"	255
1087	"	"	" "	" ..	165	"	256
1088	"	"	3/4 Jeff Davis " .. / 1/4 Reeves " ..	" ..	167	"	257-258
1089	"	"	Reeves "	" ..	169	"	259
1090	"	"	" "	" ..	171	"	260
1091	"	"	" "	" ..	173	"	261
1092	"	"	1/2 Reeves " .. / 1/2 Pecos " ..	" ..	175	"	262-4577
1093	"	"	Pecos "	" ..	177	"	4406
1094	"	"	" "	" ..	179	"	4407
1095	"	"	" "	" ..	181	"	4408
1096	"	"	" "	" ..	183	"	4409
1097	"	"	" "	" ..	185	"	4410
1098	"	"	" "	" ..	187	"	4411
1099	"	"	" "	" ..	189	"	4412
1100	"	"	1/2 Reeves " .. / 1/2 Presidio " ..	" ..	191	"	263-1151

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Number of certificate.	Acres.	When issued.	Where located.	Unpatented.	Sur. No.	Block.	Abst. No.
1101	640	May 17, 1875	Reeves county....	Unpatented..	193	11	264
1102	"	"	" "	"	195	"	265
1103	"	"	" "	"	197	"	266
1104	"	"	" "	"	199	"	267
1105	"	"	½ Reeves " .. ½ Jeff Davis " ..	"	201	"	268–258
1106	"	"	Jeff Davis "	"	203	"	259
1107	"	"	" "	"	205	"	260
1108	"	"	" " ...	"	207	"	1159
1109	"	"	" "	"	209	"	1160
1110	"	"	5/6 Reeves " .. 1/6 Jeff Davis " ..	"	211	"	1161
1111	"	"	Reeves "	"	213	"	1162
1112	"	"	" "	"	215	"	1163
1113	"	"	" "	"	217	"	1164
1114	"	"	" "	"	219	"	1165
1115	"	"	Presidio "	"	221	"	1166
1116	"	"	1/10 Reeves " .. 9/10 Pecos " ..	"	223	"	269–4576
1117	"	"	Pecos "	"	225	"	4413
118							
1118	"	"	" "	"	227	"	4414
1119	"	"	" "	"	229	"	4415
1120	"	"	" "	"	231	"	4416
1121	"	"	" "	"	233	"	4417
1122	"	"	" "	"	235	"	4580
1123	"	"	Reeves "	"	237	"	
1124	"	"	" " ...	"	239	"	
1125	"	"	" "	"	241	"	
1126	"	"	" "	"	243	"	
1127	"	"	" "	"	245	"	
1128	"	"	" "	"	247	"	
1129	"	"	½ Jeff Davis " .. ½ Reeves " ..	"	249	"	
1130	"	"	Jeff Davis "	"	251	"	
1131	"	"	" "	"	253	"	
1132	"	"	Reeves "	"	255	"	
1133	"	"	" "	"	257	"	
1134	"	"	" "	"	259	"	
1135	"	"	" "	"	261	"	
1136	"	"	" "	"	263	"	
1137	"	"	" "	"	265	"	
1138	"	"	" "	"	267	"	
1139	"	"	" "	"	269	"	
1140	"	"	Presidio "	"	271	"	1191
1141	"	"	½ Pecos " .. ½ Reeves " ..	"	273	"	4418–12
1142	"	"	Presidio "	Jan. 13, 1890	1	12	1193
1143	"	"	" " ...	"	3	"	1194
1144	"	"	" "	"	5	"	1195
1145	"	"	" " ...	"	7	"	1196
1146	"	"	" "	"	9	"	1197
1147	"	Aug. 11, 1875	" "	"	11	"	1198
1148	"	"	" "	"	13	"	1199
1149	"	"	" "	"	15	"	1200
1150	"	"	" "	"	17	"	1201
1151	"	"	" "	14,	19	"	1202
1152	"	"	" "	"	21	"	1203

Number of certificate.	Acres.	When issued.	Where located.	Patented.	Sur. No.	Block.	Abst. No.	Patentee.
1153	640	Aug. 11, 1875	Presidio county	Jan. 14, 1890	23	12	1204	
119								
1154	"	"	" "	"	25	"	1205	
1155	"	"	" "	"	27	"	1206	
1156	"	"	" "	"	29	"	1207	
1157	"	"	" "	"	31	"	1208	
1158	"	"	" "	"	33	"	1209	
1159	"	"	" "	"	35	"	1210	
1160	"	"	" "	"	37	"	1211	
1161	"	"	" "	"	39	"	1212	
1162	"	"	" "	"	41	"	1213	
1163	"	"	" "	"	43	"	1214	
1164	"	"	" "	"	45	"	1215	
1165	"	"	" "	"	47	"	1216	
1166	"	"	" "	"	49	"	1217	
1167	"	Sept. 1, 1875	Presidio county	Jan. 2, 1890	51	"	1218	
1168	"	"	" "	3,	53	"	1219	
1169	"	"	" "	"	55	"	1220	
1170	"	"	" "	"	57	"	1221	
1171	"	"	" "	"	59	"	1222	
1172	"	"	" "	"	61	"	1223	
1173	"	"	" "	"	63	"	1224	
1174	"	"	" "	4,	65	"	1225	
1175	"	"	" "	"	67	"	1226	
1176	"	"	" "	"	69	"	1227	
1177	"	"	" "	"	71	"	1228	
1178	"	"	" "	"	73	"	1229	
1179	"	"	" "	"	75	"	1230	
1180	"	"	" "	"	77	"	1231	
1181	"	"	" "	"	79	"	1232	
1182	"	"	" "	"	81	12	1233	G. H. & S. A. R'y Co.
1183	"	"	" "	"	83	"	1234	"
1184	"	"	" "	"	85	"	1235	"
1185	"	"	" "	"	87	"	1236	"
1186	"	"	" "	6,	89	"	1237	"
1187	"	"	" "	"	91	"	1238	"
1188	"	"	" "	"	93	"	1239	"
1189	"	"	" "	"	95	"	1240	"
1190	"	"	" "	"	97	"	1241	"
120								
1191	"	"	" "	"	99	"	1242	"
1192	"	"	" "	"	101	"	1243	"
1193	"	"	" "	"	103	"	1244	"
1194	"	"	" "	"	105	"	1245	"
1195	"	"	" "	"	107	"	1246	"
1196	"	"	" "	"	109	"	1247	"
1197	"	"	" "	7,	111	"	1248	"
1198	"	"	" "	"	113	"	1249	"
1199	"	"	" "	"	115	"	1250	"
1200	"	"	" "	"	117	"	1251	"
1201	"	"	" "	"	119	"	1252	"
1202	"	"	" "	"	121	"	1253	"
1203	"	"	" "	"	123	"	1254	"
1204	"	"	" "	"	125	"	1255	"

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Number of certificate.	Acres.	When issued.	Where located.	Patented.	Sur. No.	Block.	Abst. No.	Patentee.
1205	640	Sept. 1, 1875	Presidio county	Jan. 7, 1890	127	12	1256	G. H. & S. A. R'y Co.
1206	"	"	" "	"	129	"	1257	"
1207	"	"	Brewster "	Unpatented	1	13	527	
1208	"	"	" "	"	3	"	528	
1209	"	"	" "	"	5	"	529	
1210	"	"	" "	"	7	"	530	
1211	"	"	" "	"	9	"	531	
1212	"	"	" "	"	11	"	532	
1213	"	"	" "	"	13	"	533	
1214	"	"	" "	"	15	"	534	
1215	"	"	" "	"	17	"	535	
1216	"	"	" "	"	19	"	536	
1217	"	"	" "	"	21	"	537	
1218	"	"	" "	"	23	"	538	
1219	"	"	" "	"	25	"	539	
1220	"	"	" "	"	27	"	540	
1221	"	"	" "	"	29	"	541	
1222	"	"	" "	"	31	"	542	
1223	"	"	" "	"	33	"	543	
1224	"	"	" "	"	35	"	544	
1225	"	"	" "	"	37	"	545	
1226	"	"	" "	"	39	"	546	
1227	"	"	" "	"	41	"	547	
121								
1228	"	"	" "	"	43	"	548	
1229	"	"	" "	"	45	"	549	
1230	"	"	" "	"	47	"	550	
1231	"	"	" "	"	49	"	551	
1232	"	"	" "	"	51	"	552	
1233	"	"	" "	"	53	"	553	
1234	"	"	" "	"	55	"	554	
1235	"	"	" "	"	57	"	555	
1236	"	"	" "	"	59	"	556	
1237	"	"	" "	"	61	"	557	
1238	"	"	" "	"	63	"	558	
1239	"	"	" "	"	65	"	559	
1240	"	"	" "	"	67	"	560	
1241	"	"	" "	"	69	"	561	
1242	"	"	" "	"	71	"	562	
1243	"	"	" "	"	73	"	563	
1244	"	"		"	75	"	564	
1245	"	"		"	77	"	565	
1246	"	"		"	79	"	566	
				Patented.				
1284	"	"	Schleicher "	July 18, 1876	9	B	382	
1285	"	"	" "	"	11	"	278	
1299	"	"	Sutton "	Aug. 1, 1876	25	C	205	
1336	596 7/10	"	San Saba "	Jan. 11, 1887	1	...	505	G. H. & S. A. R'y Co.
1337	640	"	" "	12, 1877	1	...	506	"
1339	"	"	" "	12, 1877	1	...	507	"
1340	"	"	" "	" "	1	...	508	"
1341	320	"	McCulloch, " 55 acres, & Menard, 265 acres	25, 1887	75	{	432-1324	"
1356	640	"	McCulloch "	Aug. 4, 1876	69	D	448	"

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Number of certificate.	Acres.	When issued.	Where located.	Unpatented.	Sur. No.	Block.	Abst. No.	Patentee.
1357	640	Sept. 1, 1875	Val Verde county	Unpatented	17	A2	Omitted.	
1358	"	"	" "	"	59	A2	886	
				Patented.				
1359	"	Nov. 10, 1876	Schleicher "	Sept. 28, 1888	1	H	315	G. H. & S. A. R'y Co.
1360	"	"	" "	"	3	"	316	"
1361	"	"	" "	25,	5	"	317	"
1362	463 1/10	"	" "	"	7	"	318	"
1363	640	"	" "	28,	9	"	319	"
1364	"	"	" "	"	11	"	320	"
1365	"	"	" "	"	13	"	321	"
1366	"	"	" "	"	15	"	322	"
122								
1367	609 3/4	"	" "	"	17	"	323	"
1368	640	"	" "	"	19	"	325	"
1369	"	"	" "	"	21	"	325	"
1370	"	"	" "	"	23	"	326	"
1371	"	"	" "	"	25	"	327	"
1372	"	"	" "	"	27	"	328	"
1373	"	"	" "	"	29	"	329	"
1374	"	"	" "	"	31	"	330	"
1375	"	"	" "	"	33	"	331	"
1376	"	"	" "	"	35	"	332	"
1377	"	"	" "	"	37	"	333	"
1378	"	"	" "	"	39	"	334	"
1379	"	"	" "	"	41	"	335	"
1380	"	"	" "	Oct. 4, 1888	43	"	336	"
1381	"	"	" "	3,	45	"	337	"
1382	"	"	" "	"	47	"	338	"
1383	"	"	" "	"	49	"	339	"
1384	"	"	" "	2,	51	"	340	"
1385	"	"	" "	"	53	"	341	"
1386	"	"	" "	"	55	"	342	"
1387	"	"	" "	"	57	"	343	"
1388	"	"	" "	1,	59	"	344	"
1389	"	"	" "	Sep. 29, 1888	61	"	345	"
1390	"	"	" "	"	63	"	346	"
1391	"	"	" "	"	65	"	347	"
1392	"	"	" "	28,	67	"	348	"
1393	"	"	" "	"	69	"	280	"
1394	"	"	" "	"	71	"	281	"
1395	"	"	" "	"	73	"	282	"
1396	"	"	" "	27,	75	"	283	"
1397	"	"	" "	"	77	"	284	"
1398	"	"	" "	"	79	"	285	"
1399	"	"	" "	"	81	"	286	"
1400	"	"	" "	26,	83	"	287	"
1401	"	"	" "	Sep. 2, 1885	1	I	288	"
1402	"	"	" "	"	3	...	289	"
123								
1403	"	"	" "	"	5	...	290	"
1404	"	"	" "	"	7	I	291	"
1405	"	"	" "	"	9	"	292	"
1406	"	"	" "	"	11	"	293	"
1407	"	"	" "	Aug. 27, 1885	13	"	294	"
1408	"	"	" "	28,	15	"	295	"
1409	"	"	" "	.....	17	"	296	"

Number of certificate.	Acres.	When issued.	Where located.	Patented.	Sur. No.	Block.	Abst. No.	Patentee.
1410	640	Nov. 10, 1876	Schleicher county	.....	19	I	207	G. H. & S. A. R'y Co.
1411	"	"	" "	.....	21	"	208	"
1412	"	"	" "	.....	23	"	209	"
1413	"	"	" "	.....	25	"	300	"
1414	"	"	" "	Aug. 29, 1885	27	"	301	"
1415	"	"	" "	"	29	"	302	"
1416	"	"	" "	Sep. 1, 1885	31	"	303	"
1417	"	"	" "	Aug. 29, 1885	33	"	304	"
1418	"	"	" "	"	35	"	305	"
1419	"	"	" "	"	37	"	306	"
1420	"	"	" "	28,	39	"	307	"
1421	"	"	" "	29,	41	"	308	"
1422	"	"	" "	"	43	"	309	"
1423	"	"	" "	"	45	"	310	"
1424	"	"	" "	"	47	"	311	"
1425	"	"	" "	"	49	"	312	"
1426	"	"	" "	3,	51	"	313	"
1427	"	"	" "	"	53	"	314	"
1428	"	"	" "	"	55	"	246	"
1429	"	"	" "	"	57	"	247	"
1430	"	"	" "	"	59	"	248	"
1431	"	"	" "	"	61	"	249	"
1432	"	"	" "	4,	63	"	250	"
1433	"	"	" "	3,	65	"	251	"
1434	"	"	" "	"	67	"	252	"
1435	"	"	" "	"	69	"	253	"
1436	"	"	" "	"	71	"	254	"
1437	"	"	" "	"	73	"	255	"
1438	"	"	" "	"	75	"	256	"
124								
1439	"	"	" "	.....	77	"	257	"
1440	"	"	Sutton	Aug. 10, 1885	1	K	207	"
1441	"	"	Schleicher	"	3	"	258	"
1442	"	"	" "	"	5	"	259	"
1443	"	"	" "	"	7	"	260	"
1444	"	"	Sutton	"	9	"	208	"
1445	"	"	" "	"	11	"	209	"
1446	"	"	Schleicher	"	13	"	261	"
1447	"	"	" "	Aug. 8, 1885	15	"	262	"
1448	"	"	" "	"	17	"	263	"
1449	"	"	" "	10,	19	"	210	"
1450	"	"	" "	"	21	"	211	"
1451	"	"	" "	"	23	"	212	"
1452	"	"	" "	8,	25	"	213	"
1453	"	"	" "	10,	27	"	214	"
1454	"	"	" "	"	29	"	215	"
1455	"	"	Schleicher	"	31	"	264	"
1456	"	"	" "	"	33	"	265	"
1457	"	"	" "	"	35	"	266	"
1458	"	"	" "	"	37	"	267	"
1459	"	"	" "	"	39	"	268	"
1460	"	"	Sutton	"	41	"	216	"
1461	"	"	" "	"	43	"	217	"
1462	"	"	" "	"	45	"	218	"
1463	"	"	" "	"	47	"	219	"

Number of certificate.	Acres.	When issued.	Where located.	Patented.	Sur. No.	Block.	Abst. No.	Patentee.
1464	640	Nov. 10, 1876	Sutton county..	Aug. 10, 1885	49	K	220	G. H.&S. A. R'y Co.
1465	"	"	Schleicher " ..	"	51	"	269	"
1466	"	"	" " ..	"	53	"	270	"
1467	"	"	" " ..	"	55	"	271	"
1468	"	"	Sutton " ..	"	57	"	221	"
1469	"	"	" " ..	"	59	"	222	"
1470	"	"	" " ..	"	61	"	223	"
1471	"	"	" " ..	"	63	"	224	"
1472	"	"	" " ..	"	65	"	225	"
1473	"	"	Schleicher " ..	"	67	"	272	"
1474	"	"	" " ..	"	69	"	273	"
125								
1475	"	"	" " ..	"	71	"	274	"
1476	"	"	Sutton " ..	"	73	"	226	"
1477	"	"	" " ..	"	75	"	227	"
1478	"	"	" " ..	"	77	"	228	"
1479	"	"	" " ..	"	79	"	229	"
1480	"	"	" " ..	"	81	"	230	"
1481	"	"	Schleicher " ..	"	83	"	275	"
1482	"	"	" " ..	"	85	"	276	"
1483	"	"	" " ..	"	87	"	277	"
1484	"	"	" " ..	17,	1	L	212	"
1485	"	"	" " ..	"	3	"	213	"
1486	"	"	" " ..	"	5	"	214	"
1487	"	"	" " ..	"	7	"	215	"
1488	"	"	" " ..	"	9	"	216	"
1489	"	"	" " ..	"	11	"	217	"
1490	"	"	" " ..	"	13	"	218	"
1491	"	"	" " ..	"	15	"	219	"
1492	"	"	" " ..	"	17	"	220	"
1493	"	"	" " ..	"	19	"	221	
1494	"	"	" " ..	Aug. 17, 1885	21	"	222	
1495	"	"	" " ..	"	23	"	223	
1496	"	"	" " ..	"	25	"	224	
1497	"	"	" " ..	18,	27	"	225	
1498	"	"	" " ..	"	29	"	226	
1499	"	"	" " ..	17,	31	"	227	
1500	"	"	" " ..	"	33	"	228	
1501	"	"	" " ..	"	35	"	229	
1502	"	"	" " ..	"	37	"	230	
1503	"	"	" " ..	"	39	"	231	
1504	"	"	" " ..	"	41	"	232	
1505	"	"	" " ..	"	43	"	233	
1506	"	"	" " ..	"	45	"	234	
1507	"	"	" " ..	"	47	"	235	
1508	"	"	" " ..	"	49	"	236	
1509	"	"	" " ..	Sep. 28, 1888	1	M	237	
126								
1510	"	"	" " ..	"	3	"	238	
1511	"	"	" " ..	27,	5	"	239	
1512	"	"	" " ..	"	7	"	240	
1513	"	"	" " ..	"	9	"	241	
1514	"	"	" " ..	"	11	"	242	
1515	"	"	" " ..	"	13	"	243	
1516	"	"	" " ..	"	15	"	244	
1517	"	"	" " ..	26,	17	"	245	

Number of certificate.	Acres.	When issued.	Where located.	Patented.	Sur. No.	Block.	Abst. No.	Patentee.
1518	640	Nov. 10, 1876	Schleicher county	Sept. 26, 1888	19	M	349	
1519	"	"	" "	"	21	"	350	
1520	"	"	" "	25,	23	"	351	
1521	"	"	" "	"	25	"	352	
1522	"	"	" "	"	27	"	353	
1523	"	"	" "	"	29	"	354	
1524	"	"	" "	"	31	"	355	
1525	"	"	" "	"	33	"	356	
1526	"	"	" "	24,	35	"	357	
1527	"	"	" "	"	37	"	358	
1528	"	"	" "	"	39	"	359	
1529	"	"	" "	"	41	"	360	
1530	"	"	" "	22,	43	"	361	
1531	"	"	" "	"	45	"	362	
1532	"	"	" "	"	47	"	363	
1533	"	"	" "	"	49	"	364	
1534	"	"	" "	21,	51	"	365	
1535	"	"	" "	"	53	"	366	
1536	"	"	" "	"	55	"	367	
1537	"	"	" "	"	57	"	368	
1538	"	"	" "	"	59	"	369	
1539	"	"	" "	"	61	"	370	
1540	"	"	" "	"	63	"	371	G. H. & S. A. R'y Co.
1541	"	"	" "	"	65	"	372	"
1542	"	"	" "	"	67	"	373	"
1543	"	"	" "	"	69	"	374	"
1544	"	"	" "	"	71	"	375	"
127								
1545	"	"	" "	20,	73	"	376	"
1546	"	"	" "	"	75	"	377	"
1547	"	"	" "	"	77	"	378	"
1548	"	"	" "	"	79	"	379	"
1549	"	"	Kimble "	.....	1	N	230	
1550	"	"	" "	.....	3	"	231	
1551	"	"	" "	.....	5	"	232	
1552	"	"	" "	.....	7	"	233	
1553	"	"	" "	.....	9	"	234	
1554	"	"	" "	.....	11	"	235	
1555	"	"	" "	.....	13	"	236	
1556	"	"	" "	.....	15	"	237	
1557	"	"	" "	.....	17	"	238	
1558	"	"	" "	.....	19	"	239	
1559	"	"	" "	.....	21	"	240	
1560	"	"	" "	.....	23	"	241	
1561	"	"	" "	.....	25	"	242	
1562	"	"	" "	.....	27	"	243	
1563	"	"	" "	.....	29	"	244	
1564	"	"	" "	.....	31	"	245	
1565	"	"	" "	.....	33	"	246	
1566	"	"	" "	.....	35	"	247	
1567	"	"	" "	.....	37	"	248	
1568	"	"	" "	.....	39	"	249	
1569	"	"	" "	.....	41	"	250	
1570	"	"	" "	.....	43	"	251	
1571	"	"	" "	.....	45	"	252	
1572	"	"	" "	.....	47	"	253	

Number of certificate.	Acres.	When issued.	Where located.	Patented.	Sur. No.	Block.	Abst. No.	Patentee.
1573	640	Nov. 10, 1876	Kimble county		49	N	254	
1574	"	"	" "		51	"	255	
1575	"	"	" "		53	"	256	
1576	"	"	" "		55	"	257	
1577	"	"	" "		57	"	258	
1578	"	"	" "		59	"	259	
1579	"	"	" "		61	"	260	
128								
1580	"	"	" "		63	"	261	
1581	"	"	" "		65	"	262	
1582	"	"	" "		67	"	263	
1583	"	"	" "		69	"	264	
1584	"	"	" "		71	"	265	
1585	"	"	" "		73	"	266	
1586	"	"	" "		75	"	267	
1587	"	"	" "		77	"	268	
1588	"	"	" "		79	"	269	
1589	"	"	" "		81	"	270	
1590	"	"	" "		83	"	271	
1591	"	"	" "		85	"	272	
1592	"	"	" "		87	"	273	
1593	"	"	" "		89	"	274	
1594	"	"	" "		91	"	275	
1595	"	"	" "		93	"	276	
1596	"	"	" "		95	"	277	
1597	"	"	" "		97	"	278	
1598	"	"	" "		99	"	279	
1599	"	"	" "		101	"	280	
1600	"	"	" "		103	"	281	
1601	"	"	" "		105	"	282	
1602	"	"	" "		107	"	283	
1603	"	"	Val Verde "		57	A2	883	
1604	"	"	Kimble "		111	N	284	
1605	"	"	" "		113	"	285	
1606	"	"	" "		115	"	286	
1607	"	"	" "		117	"	287	
1608	"	"	Val Verde "		61	A2	884	
1609	"	"	Pecos "		35	"	1945	
1610	"	"	" "		37	"	1946	
1611	"	"	" "		39	"	1947	
1612	"	"	" "		41	"	1948	
1613	"	"	" "		43	"	1913	
1614	"	"	" "		45	"	1914	
129								
1615	"	"	Zavalla "	Oct. 18, 1887	13	O	147	G. H. & S. A. R'y Co.
1616	"	"	Pecos "		47	A2	1915	
1617	"	"	" "		49	"	1916	
1618	"	"	" "		51	"	1917	
1619	"	"	" "		53	"	1918	
1620	"	"	" "		55	"	1919	

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Numbers 1/1 to 1/48, 1/116 to 120, 1/122, 1/124, 1/126, 1/128, 1/130, 1/132, 1/134, 1/140 to 1/299, and 1/230 to 1/415, inclusive, of said certificates being issued to the Galveston, Harrisburg and San Antonio Railway Company for the section of road (including sidings) beginning at the point of junction with the old line of the Buffalo Bayou, Beazos and Colorado Railway Co. at a distance of 493 feet west of the west end of the approach to the bridge over the Colorado river and ending at the west approach to the bridge over the West Navidad river; numbers 1/416 to 1/813, 1/831, 1/835, 1/840, 1/843, 1/846, 1/857, 1,855, 1/858 of said certificates being issued to the said company for the section of road (including sidings) beginning at the western sill of the western approach to the bridge over the West Navidad river and ending at the center of a red sandstone culvert, it being the first one east of Buck branch; numbers 859 to 1166 of said certificates being issued to said company for the section of road (including sidings) beginning at a red sandstone culvert, the first one east of Buck's branch and ending at the turn-table at Luling; numbers 1167 to 1246, 1284, 1285, 1299, 1336, 1337, 1339 to 1341 to 1358 of said certificates being issued to said company for the section of road (including sidings) beginning at the station-house at Luling and ending at west end of the siding at Kingsbury; numbers 1359 to 1620 being issued to said company for the section of road (including sidings) beginning at east pier of Guadalupe bridge, thence eastward, ending at a point opposite the depot door at Kingsbury, and said locations and surveys being made by virtue of said certificates.

And it is further ordered, adjudged, and decreed that each and all of said certificates be and they are hereby cancelled and held for naught, and each and all of said patents are hereby cancelled and shall hereafter be held for naught, and the cloud cast upon the title of the State to the lands located and surveyed under said certificates is hereby removed.

And it is adjudged and decreed that the State of Texas has perfect and complete title to all of said lands. It is further ordered and decreed that the plaintiff, The State of Texas, do have her writ or writs placing her in possession of each and all of said parcels or tracts of land; and it is further decreed that the plaintiff do have and recover all costs in this cause expended, for which execution may issue.

And to this judgment the defendant in open court excepted and gave notice of appeal to the court of civil appeals of the fourth supreme judicial district of Texas, at San Antonio, and it was ordered that the defendant have ten days after the adjournment of this court in which to prepare a statement of facts. (Entered on Minutes Dist. Court Brewster Co., pages 319 to 358, vol. 1, inclusive.)

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Agreed Statement of Facts.

Filed Sept. 14, 1893.

THE STATE OF TEXAS *vs.* THE G., H. & S. A. R'Y CO. } Suit Pending in the District Court of Brewster County.

Statement of facts.

Be it remembered on the trial of this cause, beginning on the 13th and ending on the 14th days of September, 1893, the following proceedings were had and evidence introduced, to wit:

1st. The following agreement of parties as to certain facts, to wit:

131 In the District Court of Brewster County.

THE STATE OF TEXAS *vs.* G., H. & S. A. R'Y CO. } # 101.

We agree that the following facts may be used on the trial of the above-stated cause:

I. It is agreed that the defendant company received from the State and located the certificates described in plaintiff's petition, and that said petition contained a true statement of the number of certificates issued, the number of each certificate, the number of acres, the date when certificates were issued, the counties in which located, the section of road for which said certificates issued, as well as the number of miles of main track and sidings in each section, and whether the same has been patented and the date of the patents.

II. It is further agreed that the defendant railway company begun the construction of the first section of its road, that part of its road for which certificates in this suit were issued, at the point of junction with the old line of the Buffalo Bayou, Brazos and Colorado railroad, at a distance of 493 feet west of the west approach to the bridge over the Colorado river, and ending at the west end of west approach over the West Navidad river, subsequent to July 27, 1870, and completed the same December 19, 1873.

That the second section of defendant company's road, from the "western sill of the western approach to the bridge over the west Navidad river and ending at the center of a red sandstone culvert, the first one east of 'Buck's branch,'" was constructed and completed between July 27, 1870, and June 25, 1874.

That the third section of defendant company's road, from a "red sandstone culvert, the first one east of Buck's branch, and ending at the turn-table at Luling," was constructed and completed between July 27, 1870, and January 16, 1875.

That the fourth section of defendant company's road, between "the station-house at Luling and ending at the west ending of the siding at Kingsbury," was constructed and completed between July 27, 1870, and July 12, 1875.

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That the fifth section of defendant company's road, between "the east pier of the Guadalupe bridge, thence eastward, ending at
132 a point opposite the depot door at Kingsbury or the west end of the siding where the last inspection terminated," was constructed and completed between July 27, 1870, and October 27, 1876.

That that portion of the road of defendant company between the Colorado river and San Antonio was completed to San Antonio Feb. 13, 1877.

III. That said railroad was thereafter constructed and put in running order and operated from said beginning, at the bridge over the Guadalupe river, to El Paso, in El Paso county, being a distance of — miles.

IV. It is further agreed that the charters and special laws relating to defendant's company and relating to grants of land to railroad companies may be used on the trial in evidence and considered without the necessity of incorporating the same in the statement of facts, as well as all special laws incorporating railroads, and other laws, general and special, granting lands and land certificates for works of internal improvements.

V. Any other pertinent fact may be introduced by either party on trial.

VI. There are now remaining and belonging to the State of Texas — acres of public domain, reserved since 1879 from location by certificates.

VII. Defendant paid taxes on land sued for continuously since they were located up to the present time, which was received by the State of Texas and by it used as other taxes are used by the State.

VIII. Defendant paid all fees for locating and surveying the said lands sued for, as well as the same number of alternate sections, known as the even-numbered, for the public free school fund, and have paid all surveying fees and all fees to the commissioner of the general land office in respect thereto and all sums of money necessary for its protection and in the way of betterments for the preservation of the same, etc.

IX. The said certificates for land described in plaintiff'- petition were issued to it after the said railway company had completed and after the governor had appointed an engineer to examine the same and report; which engineer did examine the same and report to the governor the condition of said road; and thereupon the governor approved the report, and thereupon the land commissioner issued certificates to said railway company, signed by the commis-
133 sioner of the general land office, calling for main line and sidings, not separating the sidings from the main line.

X. At the time *of* the act of Jan'y 30, 1854, became a law E. M. Pease was governor of the State of Texas. It was by his approval as such governor that the bill passed the legislature and became a law.

The first certificates that were issued under the act of Jan'y 30, 1854, were authorized and directed to be made by the said E. M. Pease, whose term of office had not then expired.

These certificates were issued upon a report made by Tipton

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Walker, engineer, appointed by Governor Pease in pursuance of the provisions of said act, which report bears date of March 24, 1856, and is now on file in the proper department of the State, in the capitol, at Austin.

In this report said Tipton Walker specially states that the railway company to whom said certificates were issued had completed of its main line a certain number of miles, and also states the length of sidings that had been constructed.

Upon receiving this report the said E. M. Pease, as governor as aforesaid, in a letter addressed to Hon. Stephen Crosby, commissioner of the general land office, under date of March 31, 1856, advised said Crosby, as such commissioner, that the president of the railway company making application for said certificates had notified him (the governor) that said railway company had completed and put in running order a section of twenty-five miles and more of its road; that, there being no State engineer, he had appointed under the act of Jan'y 30, 1854, Tipton Walker engineer to examine said section of road, and that he then enclosed a copy of said report under oath, with the affidavit accompanying the same, from the said engineer, wherein said engineer reported that said section, containing (with the necessary turnouts) 32.12 miles, is constructed in accordance with the provisions of its charter and the general laws of the State in force regulating railroads.

XI. The various engineers appointed by the different governors to inspect railways as the same were constructed, in their respective reports of inspection to the respective governors stated the number of miles and feet of main track, the number of miles or feet of sidings, the number of miles or feet of bridges, culvert-, and tressels, the number of depots, cars, engines, weight of iron, and width and character of track and grade. The action of the respective governors (except Governor Roberts) on said reports *were* usually
134 in the following words: "Reports examined and approved;" upon which reports and action of the respective governors the commissioner of the general land office issued to the respective companies the certificates for main track and sidings.

During the administration of Governor Roberts the reports of the engineers were in substance and form of those made to other governors, but he approved for only the number of miles of main track stated in the reports.

In one instance during the administration of Governor Davis he approved one report for sidings exclusively, for which certificates were issued in the usual amount per mile. This was also done in one instance by Governor Hubbard, for which certificates issued. On March 13, 1877, Governor Hubbard made the following endorsement on one of the reports: "This report of Inspector Gray examined and approved for thirty miles of main track and sidings as being made, graded, and in all respects complying with the law." In many cases patents were issued on said certificates for both main line and turnouts, and in some cases did not separate the quantity of land for main line from the quantity of land for sidings.

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XII. The said railway company had expended large sums of money, as aforesaid, in the work of surveying such lands, locating and correcting the same; also in preserving said railway company and enabling it to perform the duties incumbent upon it as a common carrier, and has paid large sums of money by way of taxes to the State of Texas.

XIII. Said lands have been surveyed in all respects as the law require- lands to be surveyed for railway companies by virtue of the donations or grants of land into tracts of six hundred and forty acres, where the same could be done, surveying an equal amount for the benefit of the school fund, the field-notes of which were recorded and are now in the proper surveyor's office; that maps, plats, and sketches thereof were duly made, which, with the field-notes and cerficates, have been duly returned to the general land office of the State of Texas within the time required by law, and have remained on file in the land office ever since; that the same were duly platted upon the maps of the general land office of the State of Texas and suitably marked as the lands of the railway company. The maps of the same are in use *of* the land office of the State of Texas now. The odd sections recognized as said railway
135 company's lands and maps thereof have been furnished to the county surveyors in all the counties where the said lands are situated and are now in their possession and control, showing said lands platted thereon and recognized by the State of Texas, through the officers, as the lands granted to said defendant railway company.

XIV. The following commissioners have issued land certificates for sidings, as well as for main line, to wit: Stevens, Crosby, White, Kuechler, and Groos.

During the administration of the following governors land certificates were issued for sidings and main line to the railway companies named as follows:

Gov. E. M. Pease:

To the Buffalo Bayou, Brazos & Colorado R. R.

Gov. H. Runnels:

To the Southern Pacific R. R. Co.
To the San Antonio & Mexican R. R. Co.

Gov. Sam. Houston:

To the Southern Pacific Railroad Co.
To the Washington Co. R. R. Co.

Gov. Edward Clark:

To the Washington Co. R. R. Co.
To the B. B., B. & C. R. R. Co.

Gov. J. W. Throckmorton:

To the T. & N. O. R. R. Co.
To the Washington Co. R. R. Co.

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Gov. E. J. Davis:

To the G., H. & S. A. R. R. Co.
To the Galveston, Houston & Henderson R. R. Co.
To the Indianola R. R. Co.
To the Texas Pacific Railroad Co.
To the Houston & Great Northern R. R. Co.
To the Houston & Texas Central Railway Co.
To the Waco & Northwestern R'y Co.

Gov. Richard Coke:

To the Texas & Pacific Railroad Co.
To the Houston & Great Northern R. R. Co.
To the Gulf, Colorado & Santa Fé R'y Co.
To the Galveston, Harrisburg & San Antonio R. R. Co.

Gov. R. Hubbard:

To the Texas Pacific R. R. Co.
136 To the Houston & Great Northern R'y.
To the Gulf, Colorado & Santa Fé R'y.
To the Denison & Southeastern.
To the East Line & Red River R. R.
To the Tyler Tap R. R.
To the Houston, East & West Texas R. R.
To the Georgetown.
To the Dallas & Wichita.
To the Galveston, Harrisburg & San Antonio R. R.
To the Texas Western.

XV. The lands were surveyed and located and certificates issued as shown by the statement in plaintiff's petition, and it will not be necessary for either party to procure copies of the field-notes or patents.

XVI. The defendant company completed its line of railway from San Antonio to El Paso and to Rio Grande river, in El Paso county, beginning on the — day of ——, a distance of 623.14 miles, and ending on the — day of ——, 18—, for which it never received any certificates for lands. H. B. Andrews, as vice-president of the Galveston, Harrisburg & San Antonio Railway Company, made application to His Excellency O. M. Roberts, governor of the State of Texas, to appoint a civil engineer to examine and inspect said portion of completed line; which application was refused by Gov. Roberts. The said application and the refusal of the governor thereupon is as follows:

SAN ANTONIO, *May* 9, 1882.

To His Excellency O. M. Roberts, governor of Texas.

SIR: I would respectfully request your excellency to appoint some competent civil engineer to examine a portion of the completed line of railroad belonging to the Galveston, Harrisburg & San Antonio Railway Company west of the city of San Antonio, beginning at said city and extending to Del Rio, on the Rio Grande, and beginning at El Paso, in El Paso county, and extending to a point within fifty

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miles of Eagle's Nest, on the Rio Grande, in Pecos county. The said railroad has been built and completed in accordance
137 with the laws of Texas and the charter of said company. Completed road about four hundred and sixty miles.

Respectfully,

(Signed) H. B. ANDREWS,
Vice-President G., H. & S. A. R'y Co.

The envelope in which this application is enclosed is endorsed as follows: "Application for inspection of the G., H. & S. A. R'y 460 miles west of San Antonio, &c., by H. B. Andrews, V.-president. May 9, 1882. Received May 22, 1882. Answered and refused May 22, 1882, because the law granting certificates has been repealed. (Signed) O. M. Roberts, gov."

XVII. It may be shown by the special charters or by the special acts of the legislature the different roads which received land grants in Texas.

XVIII. The act legalizing the organization of the Buffalo Bayou, Brazos and Colorado R. R. Co. was approved September 4th, 1850.

The Southern Pacific Railroad Company was chartered August 16, 1856.

The San Antonio & Mexican Gulf Railway Company was chartered Sept. 5, 1850.

The Washington County Railroad Company was incorporated February 2, 1856.

The Texas & New Orleans Railroad Company was incorporated prior to Feb'y 7, 1861.

The Galveston, Houston & Henderson Railroad Company was incorporated February 7, 1853.

The Indianola Railway Company was incorporated Jan'y 21, 1858.

The Texas & Pacific Railway Company was not chartered by the State of Texas.

The Houston & Texas Central Railway Company was incorporated September 1, 1856.

The Waco Tap Railroad Company was incorporated in 1866.

By act of May 24, 1873, the Waco and Northwestern Rail-
138 road Company was merged with the Houston & Texas Central Railway Company.

The Gulf, Colorado & Santa Fé Railroad Company was incorporated May 28, 1873.

The Denison and Southeastern Railroad Company was chartered July 27, 1877.

The East Line & Red River Railroad Company was incorporated by an act of March 22, 1871.

The Tyler Tap Railroad Company was incorporated by act of December 1, 1871.

The Houston, East & West Texas Railway Company was incorporated by act of March 11, 1875.

The Georgetown Railroad Company was chartered May 31, 1878.

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The Dallas and Wichita Railroad Company was incorporated December 2, 1871.

The Texas Western Railroad Company was incorporated Feb'ry 16, 1852.

The Columbus Tap Railroad Company was incorporated Feb'ry 2, 1860.

The Gulf, Western Texas & Pacific Railroad Company consolidated with the Indianola & San Antonio Railroad Company Aug. 4, 1870.

The Galveston, Brazos, Colorado N. G. railroad was incorporated Feb'y 2, 1875.

XIX. It is further agreed that it may hereafter be shown in evidence the date when Gen. W. P. Hardeman inspected the said railroad company from San Antonio west, and his report in reference thereto may also be introduced in evidence.

XX. The defendant company located the land sued for by virtue of 315 certificates out of 415 issued on the first section of that portion of its road from the Colorado river to the Guadalupe bridge; the 407 certificates of the 433 issued on the second section of its road; the 308 certificates issued on the third section of its road; 91 certificates of the 192 issued on the fourth section of its road, and the 262 certificates issued on the fifth section of its road, said sections of road being as heretofore referred to in this agreement.

XXI. That either party may read and have considered in evidence reports of land commissioners of this State showing number of acres of unappropriated public domain; also messages of
139 the governors showing same at stated periods and up to the present time.

That the railway company long prior to the institution of this suit executed mortgages for large amounts of money to secure issue of bonds. The mortgages were secured upon the following property, the line of road and its franchises, and on all the lands, locations, surveys, land scrip, and rights to lands that have been or may be hereafter acquired by said company for the construction of its railroad from Harrisburg to San Antonio by virtue of any general or special acts of the legislature of the State of Texas making donations of lands.

Some of said mortgages are each for the sum of $20,000.00 per mile of the road. One of said mortgages is the mortgage mentioned in defendant's plea, in which George F. Stone is the sole surviving trustee, and it shall not be necessary to further describe the said mortgages. The said mortgages and bonds which they secure were issued and floated on the money market and money obtained for the purpose of building and constructing the railroad of defendant company, and were duly recorded in the counties where lands are situated.

The railway company treated and understood, and also the holders of said mortgages so understood, that the land- sued for were embraced in and secured by said mortgages, but this point is not conceded by plaintiff.

The State refused to issue and grant any certificates to the de-

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fendant company for any part of the road constructed west from San Antonio to El Paso, which is a distance of 623.14 miles of road.

It was shown by defendant further that the construction of that part of the railroad began west at Columbus, in March, 1873, and was completed to the West Navidad about Jan'y 1, 1874.

The road was opened for business on the following dates: Weimar, Nov. 16, 1873; Schulenburg, Dec. 1, 1873; Flatonio, April 16, 1874; Waelder, July 1, 1874; Luling, Sept. 1, 1874; Kingsbury, July 23, 1875; Seguin, August 10, 1875; Guadalupe river, August 10, 1876.

Construction west of San Antonio began in May, 1881. The first grading at Rio Grande river, near El Paso, was done on March 28, 1881. The construction of the road was finished from El Paso eastward Dec. 27, 1882. The road was opened for business west from San Antonio and El Paso at La Coste, 25 miles, Oct. 1, 1881; at Hondo, 50 miles, 1881; at Sabinal, 71 miles, Oct. 24, 1881; at Uvalde, 93 miles, Nov. 21, 1881; at Eagle Pass junction, 132 miles, March 6, 1882; at Del Rio, 170 miles, June 23, 1882. Construction west from San Antonio and east from El Paso met in January, 1883.

Defendant introduced the following certificates from the office of the secretary of state, to wit:

SAN ANTONIO, *June* 13, 1881.

To His Excellency O. M. Roberts, governor of Texas.

SIR: I have the honor to inform your excellency that the Galveston, Harrisburg & San Antonio Railway Company have completed an extension of their main line of railway from their terminus in the city of San Antonio westward a distance of over ten miles. The same has been built and completed in full compliance with the laws of Texas governing the construction of railroads and the provisions of the charter of said company, and is a portion of their line being built to connect with a railroad being constructed from the Pacific coast. I would therefore respectfully request the appointment of some competent engineer to inspect and report upon said completed portion of this extension in order that this company may obtain the number of certificates for land to which it is entitled under the laws of Texas.

Very respectfully,

(Signed) H. B. ANDREWS,
Vice-President.

SAN ANTONIO, *May* 9, 1882.

To His Excellency O. M. Roberts, governor of Texas.

SIR: I would respectfully request your excellency to appoint some competent civil engineer to examine a portion of the completed line of railroad belonging to the Galveston, Harrisburg & San Antonio railway west of the city of San Antonio, beginning at said city and extending to Del Rio, on the Rio Grande, and beginning at El Paso, in El Paso county, and extending to a point within fifty miles of Eagle's Nest, on the Rio Grande, in Pecos county. The said rail-

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road has been built and completed in accordance with the
141 laws of Texas and the charter of said company; completed road about 460 miles.

Respectfully,

(Signed) H. B. ANDREWS,
Vice-Pres't G., H. & S. A. R'y Co.

Endorsed: Application for inspection of the G., H. & S. A. R'w'y 460 miles west of San Antonio, etc., by H. B. Andrews, V.-pres't. May 9, 1882. Answered and refused May 22, 1882, because the law granting certificates has been repealed. (Signed) O. M. Roberts, gov.

His Excellency O. M. Roberts, governor of Texas.

SIR: In obedience to your commission, dated Austin, June 25, 1881, authorizing me to inspect ten miles or more of the Galveston, Harrisburg & San Antonio Railway Company, I have the honor to report that on the 27 and 28 days of June I inspected and measured said road and find:

1st. The road is substantially built.

2nd. That it is fully equipped for the transportation of both passengers and freight, having 32 engines, 4 sleepers, 2 parlor, 6 mail, 186 box, 129 stock, 302 flat cars.

3rd. That it is operated by steam and constructed of steel rails weighing fifty (50) pounds to the lineal yard.

4th. The length of road inspected, commencing at the passenger depot in the city of San Antonio, ending at the north end of the bridge over the Leon, is eleven (11) miles; drove railroad spike in the end of first sill on north side of river—terminal point.

5th. There are 14 bridges, well built; shortest curve, 4°; max. grade, 42 feet to the mile.

6th. The road was completed to San Antonio in Feb'y, 1877; the excursion train (which I think was the first passenger train) was on the 19th day of Feb'y, 1877.

7th. Am informed by Maj. Cannon, chief engineer of the road, that the survey west of San Antonio commenced June 1, 1880, and commenced work Jan'y 4, 1881, west from San Antonio.

8th. So far as the manner in which the road is built is concerned, it has been constructed in accordance with its charter and
142 the general laws of the State. As to whether it has been built in time, the information contained in this report will enable the attorney general to determine.

The road is completed to the Medina river, about 18 miles. They only wanted 11 miles inspected.

San Antonio, June 29th, 1881.

(Signed) WM. P. HARDEMAN,
Special Engineer.

Sworn to and subscribed before me on this the 30th day of June, A. D. 1881.

(Signed) JOHN ROSENHEIMER,
Notary Public, Bexar Co., Texas.

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Endorsed: G., H. & San Antonio R'w'y Co. Inspection report of W. P. Hardeman of ten miles west of San Antonio. June 30, 1881.

Defendant introduced in evidence deposition of W. P. Hardeman, and showed by him that he inspected the road west from San Antonio under appointment of Governor Roberts first, and afterwards under contract with Mr. Pierce, who was then the president of the railway company.

The first inspection was made on June 27 and 28, 1881, for eleven miles; balance made not long after the repeal of the law.

The work west of San Antonio began June 4, 1881. From Leona river to a short distance west of Del Rio the road was completed before April 22, 1882, a distance of 163.6 miles. Inspected the road under contract with Pierce from Rio Grande, above El Paso 268 miles, to a point near Marathon pointed out by chief engineer, Mr. Linburg, as the point to which the road was completed April 22, 1882.

Inspected all that was completed to 22 April, 1882; don't know the exact date, but what he did inspect he found complete and in running order and in other respects according to law.

Defendant proved the following facts by deposition of W. L. McGaughey, commissioner of the general land office.

The unappropriated public domain was as follows at the dates given:

	Aug. 31, 1872	88,842,704½
	Aug. 31, 1873	84,565,367.91
143	January 24, 1874	83,783,750.91
	Aug. 3, 1874	79,227,793.1

At the following round dates the unappropriated public domain, according to the then commissioner of the general land office, had ceased to exist, and the State's land liabilities exceeded its land assets, to wit:

Aug. 31, 1882.	Deficiency	6,136,615 acres.
Aug. 31, 1884.	"	6,745,723 "

At date of his report, Aug. 31, 1892, excess of public domain over liabilities was estimated at 745,666 acres. Change from liability in 1883 to excess in 1892 was caused by the non-return of certificates within the constitutional limitation of five years from date of issuance, or to their location on reserved lands, rendered them void unless floated as provided by law.

An approximate estimate of the unappropriated public domain reserved from location by certificate and sale made Jan'y 12, 1893, make- the number of acres of such land 4,393,835.

Reservation was first made by the act of July 14, 1879, which took effect Oct. 9, 1879. The number of acres of the unappropriated public domain was at that time approximately 31,025,298, as per report of the commissioner of this office.

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It is agreed that in making out a transcript of this case for appeal the clerk may leave out the exhibits to the petition of plaintiff and refer to the description of the land in the judgment, which are accurately described, and having been taken from the petition are identical therewith, this agreement being made to save the expense as well as to lessen the size of the record.

It is agreed by and between the parties hereto that the foregoing contain a true statement of facts, embracing all the material testimony introduced and offered in evidence on the trial hereof.

This the 14th day of September, 1893.

C. A. CULBERSON,
Att'y General,
R. L. BATTS,
Assistant, Attorney for Plaintiff.
T. D. COBBS,
Att'y for Defendant.

144 Examined and approved this the 14th day of September, 1893.

WALTER GILLIS,
Judge of the 41st Judicial District.

(Filed Sept. 14, 1893.
C. E. WAY,
C. D. C., B. Co., Texas.)

Appeal Bond.

Filed Sept. 25, 1893.

In the District Court of Brewster County, Texas.

THE STATE OF TEXAS
vs.
THE GALVESTON, HARRISBURG & SAN ANTONIO RAILWAY COMPANY. } No. 101.

Whereas in a proceeding had in the district court of Brewster county, Texas, at its September term, 1893, cause No. 101, in which The State of Texas, as plaintiff, brought suit for the recovery of $879{,}078\frac{1}{2}{}_{0}$ acres of land, and to cancel certain certificates and patents to lands against The Galveston, Harrisburg & San Antonio Railway Company, as defendant; and whereas said cause coming on to be heard before the court at its said September term, A. D. 1893, thereof of said court, beginning on the 13th day and ending on the 14th day of September, 1893, thereof, when the court pronounced judgment in favor of the plaintiff for the land sued, adjudging that the plaintiff, The State of Texas, do have and recover of defendant, The Galveston, Harrisburg & San Antonio Railway Company, thirteen hundred and eighty-three (1,383) sections, tracts, or parcels, containing in the aggregate eight hundred

BLEED THROUGH

and seventy-nine thousand and seventy-eight and one-twentieth (879,078 1/20) acres of land situated in the counties of Jeff Davis, Presidio, Brewster, Kimble, San Saba, Val Verde, Crockett, McCulloch, Pecos, Buchel, Reeves, Schleicher, Sutton, and Zavalla, in the State of Texas, and which said judgment did more specifically set out at length, in a tabulated form, the number of certificates, when issued, county where located, whether patented or unpatented, survey number, block number, and abstract number, and section of road certificates issued upon ;

And whereas in said judgment it was adjudged and decreed that each and all of said certificates be, and they are hereby, cancelled and shall hereafter be held for naught, and each and all of said patents are hereby cancelled and shall hereafter be held for naught, and the cloud cast upon the title of the State to the land located and surveyed under said certificates is hereby removed, and it is adjudged and decreed that the State of Texas has perfect and complete title to all of said land, and also recovering all costs against defendant. The table of certificates, surveys, patents, &c., so described in said judgment are too numerous and lengthy to be herein described ;

From which judgment in favor of the State of Texas the said Galveston, Harrisburg and San Antonio Railway Company have taken an appeal to the court of civil appeals of the State of Texas for the fourth supreme judicial district, in the city of San Antonio, in the county of Tarrant (Bexar) ;

And whereas the clerk of said court has fixed the probable amount of costs of the said court of civil appeals, supreme court, and the court below at the sum of four hundred ($400.00) dollars :

Now, therefore, we, the Galveston, Harrisburg & San Antonio Railway Company, as principal, and E. P. Hill and W. N. Shaw, as sureties, acknowledge ourselves bound to pay the State of Texas the sum of eight hundred and fifty ($850.00) dollars, the same being double the probable amount of costs of said clerk, conditioned that said Galveston, Harrisburg and San Antonio Railway Company shall prosecute its appeal with effect and shall pay all costs which have accrued in the court below and which may accrue in the court of civil appeals and the supreme court.

Witness our hands this the 19th day of September, A. D. 1893.

E. P. HILL.
W. N. SHAW.

THE STATE OF TEXAS, }
County of Harris. }

I, J. R. Waties, clerk of the district court in and for said county, do hereby certify that E. P. Hill and W. N. Shaw, whose names are subscribed to the annexed bond, are, in my opinion, good and ample security for the amount therein specified ; that they have property in said county subject to execution of a larger amount, and that if said bond was offered to me for approval the same would be accepted and approved.

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Witness my hand and seal of office, at Houston, Texas, this 19th day September, 1893.

[SEAL.] J. R. WATIES,
Clerk District Court, Harris County.

Bond taken and approved.

C. E. WAY,
Clerk of the District Court, Brewster County, Texas.

(Filed September 25, 1893.
C. E. WAY, *Clerk.*)

Assignment of Errors.

Filed Sept. 25, 1893.

In the District Court of Brewster County, Texas.

THE STATE OF TEXAS
vs.
THE GALVESTON, HARRISBURG & SAN ANTONIO RAILWAY COMPANY. } No. 101.

Assignment of Errors.

First assignment of error.

The court erred in not granting defendant's application for removal of said cause to the United States circuit court for the western district of Texas after defendant filed its petition and bond for removal, for that there was drawn in question the construction and effect of provisions of the Constitution of the United States and privilege and immunity claimed by defendant under the Constitution, and the record showed in said suit questions arising under the laws of Congress involving a Federal question.

Second assignment of error.

The court further erred in said cause in proceeding with the trial of said cause over the objection and protest of defendant, as
147 shown by its bill of exception No. 1, because the said record in said cause showed that the same was a suit arising under the laws of Congress and involving the power of the State to repeal laws which impaired its contract with defendant, in violation of the Constitution of the United States, all of which Federal questions appeared in defendant's pleading and petition for removal to the United States circuit court for the western district of Texas, accompanied with the proper bond, which ousted the said court of jurisdiction to try said cause, and the subsequent filing of the transcript of the record in the circuit court for the western district of Texas, at El Paso, completed a valid removal of this cause to said United States circuit court, and the said district court of Brewster county could proceed no further with it.

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Third assignment of error.

The court erred in overruling defendant's plea that there was a want of necessary parties to the suit, because it was shown in defendant's plea that defendant company did execute a mortgage on the land grant of said company from the State of Texas for large sums of money for the construction of the road; that George F. Stone was the sole surviving trustee in said mortgage; that said mortgage was duly recorded and constituted a prior valid existing lien upon the land to secure the issue of bonds floated and secured thereby; that the interest of the holders therein was of such nature any decree rendered therein adverse to defendant would effect the bonds and security and the interest to such an extent as that said trustee is a necessary party to the suit.

Fourth assignment of error.

The court erred in not sustaining defendant's general demurrer to plaintiff's petition, because the petition showed that the certificates were issued at a time when there was no constitutional inhibition against the issue thereof, and there is no allegation in the petition negativing the right of defendant to land certificates either under its charter granting the same or some special law conferring the right, the petition showing upon its face that defendant's charter was granted by special acts of the legislature and alleging in general terms that the certificates were issued to it at a time when there was no law in the State authorizing the grant of lands to railroads.

148 Fifth assignment of error.

The court erred in not rendering judgment for defendant for the land sued for, because it was shown that defendant is entitled to said lands by virtue of its said legislative charter and amendments thereto, and by virtue of the general laws applicable to railway companies, passed prior to the constitution of 1869, and defendant's rights thereunder were not affected or impaired and could not be affected or impaired by the prohibition contained in article 10 of section 6 of the constitution of 1869, the same being within the protection of section X of article 1 of the Constitution of the United States and of the 14th amendment thereof.

Sixth assignment of error.

The court erred in not rendering judgment for defendant for the land sued for, because defendant was entitled to said land by virtue of an act of the legislature passed April 27, 1870, entitled "An act supplemental to an act to incorporate the Buffalo Bayou, Brazos and Colorado Railway Company and to other special acts relative to said railroad company," and by virtue of the amendment to article 10, section 6, of the constitution of 1869, voted upon in November, 1872, and ratified by the legislature March 19, 1873, said constitutional amendment relating back as of the date of the adop-

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tion of the constitution of 1869 and removing all constitutional inhibition, if any, against legislative grants of land, in aiding railway companies, and giving full force and effect to the provisions of the said act of 1870 and prior legislation.

Seventh assignment of error.

The court erred in not rendering judgment for the lands sued for in favor of the defendant, because it is entitled to said land by force and by virtue of the provisions of section XI of the said act of 1870, supplementary to its charter, and by reason of the fact that subsequently to the amendment to the constitution voted on in November, 1872, and ratified by the legislature in 1873 the legislature proceeded to and did make numerous and specific grants of 16 sections of land to the mile of completed road to other railroads in this State, and defendant began the construction of its road, relying on the provisions of its charter that it would receive land
149 for the construction of its road thereafter in good faith, and in reliance and in recognition that the State of Texas would perform its obligation and accord to defendant equal rights with other railroads receiving lands under prior laws as well as in favor of which special grants of sixteen sections of land to the completed mile of railroad had been made.

Eighth assignment of error.

The court erred in not rendering judgment for the land sued for, because if it was not otherwise entitled thereto it was entitled to have and receive said land by force and virtue of the provisions of the act of March 15, 1876, granting to all railroads sixteen sections of land for every mile of railroad completed and in running order.

Ninth assignment of error.

The court erred in not rendering judgment in favor of defendant, because the evidence showed that defendant was entitled to said land by virtue of the provisions of said act of August 15, 1876, and defendant, relying in good faith upon the provisions of said act, constructed that portion of its road between San Antonio and El Paso, consisting of six hundred and twenty-three and fourteen-hundredths (623.14) miles, entitling it to receive from the State sixteen sections of land for each mile of said completed road, aggregating six million three hundred and eighty thousand nine hundred and fifty-three and six-tenths (6,380,953.6) acres, — which the State of Texas declined to issue to it land certificates entitling it to locate lands —, which, upon an accounting between defendant and the State, after giving defendant credit for $879{,}078\frac{1}{2}$ acres — the land sued for, if erroneously granted, the State would still be indebted to defendant company 5,483,875.55 acres, which the State wrongfully withholds from defendant.

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Tenth assignment of error.

The court further erred in not holding, the legislature of the State of Texas having, on April 22, 1882, repealed all laws in force granting land or land certificates to railroads, and the action of the executive department in declining to issue certificates by reason thereof to defendant for 623.14 miles of completed road, the said act of the legislature was in violation of the Constitution of the United States and was an impairment of the obligation of defendant's contract, and that by reason of the wrongs of the State
150 and by virtue of her prior laws defendant was entitled to more land than it had received certificates for, and therefore under the facts the State could not recover the lands sued for.

Eleventh assignment of error.

The court erred, under the facts introduced in evidence, in not holding that the State of Texas was indebted to defendant company in, to wit, 5,483,875.55 acres more of land than was sued for and in not permitting defendant to hold the lands sued for in settlement of and as a credit upon the amount of land owing, as shown upon an accounting between the State and the defendant.

Twelfth assignment of error.

The court erred, in view of the facts introduced upon the trial, in not holding, by reason of the wrongful acts of the State in repealing the law granting lands to railroads by the act of the 22 of April, 1882, the State was estopped, under her contract and by reason of her violation of the same, from a recovery of the land sued for without tendering or offering to tender to it land certificates for the amount of land earned by defendant company, together with all sums of money received from the railway company in betterments, taxes, and otherwise upon the principle that before the State could ask equity she must do equity.

Thirteenth assignment of error.

The court erred in not decreeing, on account of the completion of its track west from San Antonio to the Rio Grande river in El Paso county, a distance of 623.14 miles, in accordance with law, the said defendant was entitled to 9,970.24 certificates authorizing the said railway company to locate 640 acres of land by virtue of each certificate, amounting to 6,380,953.6 acres of land, and favorably reported upon.

Fourteenth assignment of error.

The court erred in not giving the defendant a credit for 176 land certificates or 112,640 acres of land, being for eleven miles of completed road inspected and duly reported upon June 29, 1881, by William P. Hardeman, who was appointed to inspect the same by Governor O. M. Roberts on June 25, 1881.

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Fifteenth assignment of error.

151 The court erred in not holding, by reason of the charter of said railway company, the several acts amendatory thereof, supplements thereto, and the decisions of the supreme court and the executive construction as to the right to acquire land, the executive, judicial, and legislative construction placed upon said charters and laws of the State established a rule of property and a property right; therefore the decision of the court in this case establishes a new construction of said charter and law, in violation of the Constitution of the United States, and particularly of the 10 section of the first article and the fourth article of amendments thereto.

Sixteenth assignment of error.

The court erred in not holding that the governor who appointed the engineer to inspect the road when completed and to report on the same was the sole and final judge as to whether or not the antecedent acts had been done and performed at a time when, under the law, defendant company became entitled to earn land after the amendment to the constitution in 1873, and that the said action of the said executive in respect thereto was final in the absence of allegations of fraud, and the finding of the executive department whether or not the antecedent acts had been done and performed which entitled the railway company to land certificates was final and conclusive.

Seventeenth assignment of error.

The court erred in not holding under the law and the facts that the charter of defendant company under which it constructed its road from Houston, in Harris county, to El Paso, Texas, was a valid contract, which entitled defendant company to receive sixteen sections of land per mile of completed road for all work done after the constitution of 1869 and 1870 was amended, and that defendant company having constructed that part of its road west from San Antonio while the law of August 15, 1876, was in force, and defendant company being entitled to lands which it had not received by reason of the law which repealed the grants of land to railroads, passed April 22, 1882, and not having had an excessive grant, the said defendant company should have been allowed upon equitable principles to select the lands sued for and to hold the same by way of estoppel against the State, as in cases where land for sidings *are* erroneously granted and treated as excessive, entitling railroads to selection.

152 Eighteenth assignment of error.

The court erred in its opinion and judgment upon the facts in the case, which are not in dispute, and should have rendered judgment therein for defendant.

T. D. COBBS,
Attorney for Def't.

(Filed September 25, 1893.
C. E. WAY, *Clerk.*)

BLEED THROUGH

Bill of Costs.

THE STATE OF TEXAS:

THE STATE OF TEXAS, Plaintiff,
vs.
THE G., H. & S. A. R'Y Co., Defendant. } No. 101.

M-. —— —— to officers of court, Dr.

To costs accrued in above-entitled cause to adjournment of Sept. term, 1893.

Clerk's fees:

Issuing writ, citations	$4 50
1 copy of petition, with certificate and seal	70 00
Docketing cause	20
Docketing motion	15
Filing 20 papers	3 00
Entering appearance	30
Entering 1 continuance	20
1 order	75
Entering final judgment	75
Entering 24,700 words in excess	37 00
Taxing costs and 1 copy thereof	25
Transcript to appellate court	164 80
Appr. appeal bond	1 50
Filing 2 papers	30
Total clerk's fees	$283 70

Sheriff's fees:

Executing writs and copy of petition (3)	$4 50
Jury fees	50
Total sheriff's fees	$5 00
Clerk's fees for'd	283 70
Total costs	$288 70

P'd by def.

153 STATE OF TEXAS, }
County of Brewster. }

I, C. E. Way, clerk of the district court in and for said county and State, hereby certify the above to be a correct account of the costs chargeable to the def't in above entitled and numbered suit up to this date.

Given under my hand and seal of office, at Alpine, this 16th day of October, A. D. 1893.

C. E. WAY,
Clerk District Court, Brewster Co., Texas.

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Certificate to Transcript.

THE STATE OF TEXAS, }
County of Brewster. }

I, C. E. Way, clerk of the district court in and for the county of Brewster and State aforesaid, hereby certify the above and foregoing 282 pages to be true transcript and copy of all the proceedings had in the cause and upon the trial of said cause No. 101, The State of Texas *vs.* The Galveston, Harrisburg & San Antonio Railway Company, as the same appears of record and on file in my office, in the court wherein said case was tried.

Witness my hand and the seal of said court, at office, in Alpine, this the 16th day of Oct., 1893.

[SEAL.] C. E. WAY,
Clerk District Court, Brewster County, Texas.

Endorsed: No. 385. The Galveston, Harrisburg & San Antonio R'w'y Co., appellant, *vs.* The State of Texas, appellee. From Brewster county. Applied for by T. D. Cobbs, attorney for def't, on
154 the 25th day of Sept., A. D. 1893; delivered to T. D. Cobbs on the 23rd day of October, A. D. 1893. C. E. Way, clerk district court, Brewster Co. Filed in the court of appeals, at San Antonio, the 13th day of Dec., A. D. 1893. H. E. Hildebrand, clerk.

Certified Questions to Supreme Court.

G., H. & S. A. R'y Co., Appellant, } No. 385. Appeal from District
vs. Court of Brewster County.
STATE OF TEXAS, Appellee. }

To the honorable supreme court of Texas:

In the above-entitled cause issues of law arise which this court deems advisable to present to the supreme court for adjudication, and have directed me to certify to said court the following:

The State of Texas instituted suit against appellant to cancel certain land certificates and patents issued by the State to appellant for land, amounting to 879,078 $\frac{1}{2}$ $\frac{1}{0}$ acres. It was alleged and proved that the certificates and patents were issued to the Galveston, Harrisburg & San Antonio Railway Company for a portion of its railroad constructed between the Colorado river and Guadalupe river between the time of the adoption of the constitution of 1869 and the passage of the act of August 16th, 1876 (arts. 4267 to 4277, Rev. Stats.). On July 27th, 1870, by special act of the legislature, appellant was chartered and recognized as the successor of the Buffalo Bayou, Brazos & Colorado Railway Company. After the passage of the act of August 16th, 1876, and before its repeal, in 1882, appellant constructed about 163 miles of railroad from San Antonio westward towards El Paso, for which the State refused to issue land certificates, the governor refusing the application for inspection on

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May 22, 1882, on the ground that the law granting certificates has been repealed.

Question 1. Did section 6, article 20, of the constitution of 1869 repeal all laws giving railroad companies the right to earn lands from the State by the construction of railroads; and, if so,
155 would this repeal apply as well to the right to earn lands given through charters as through general laws?

Question 2. If the above be answered in the negative, did appellant succeed to the rights of the Buffalo Bayou, Brazos & Colorado Railway Company by virtue of the special act of 1870, said Buffalo Bayou, Brazos & Colorado Railway Company being restricted by special act of February 11th, 1854, to run its line to Austin?

Question 3. If the laws as to land grants to railroads passed prior to 1869 were repealed by the constitution of this year, can appellant interpose and maintain in this suit the equitable defense that if the certificates issued for that portion of the road between the Colorado and Guadalupe rivers from 1870 to 1876 were illegally obtained that the State is in no position to ask relief sought by reason of the fact that appellant has earned certificates for said 163 miles of road?

Question 4. If the last question be affirmatively answered, would the fact that at the time the land for the 163 miles west of San Antonio was earned by appellant the public lands were exhausted affect the equities of the case?

(Signed) J. H. JAMES,
Chief Justice Court of Civil Appeals,
Fourth Supreme Judicial District of Texas.

Endorsed: No. 385. In court of civil appeals, fourth supreme judicial district of Texas, San Antonio. G., H. & S. A. R'y Co., appellant, *vs.* The State of Texas, appellee. Certified questions.

Opinion and Order of Supreme Court on Certified Questions.

GALVESTON, HARRISBURG & SAN ANTONIO R'Y CO. *vs.* THE STATE OF TEXAS.	No. 260. Certified Questions from Fourth District.

The following questions have been certified for our determination:

156 "The State of Texas instituted suit against appellant to cancel certain land certificates and patents issued by the State to appellant for land amounting to 879,078½ acres. It was alleged and proved that the certificates and patents were issued to the Galveston, Harrisburg & San Antonio Railway Company for a portion of its railroad constructed between the Colorado river and Guadalupe river between the time of the adoption of the constitution of 1869 and the passage of the act of August 16th, 1876 (arts. 4267 to 4277, Rev. Stats.). On July 27th, 1870, by special act of the legislature appellant was chartered and recognized as the successor of the Buffalo Bayou, Brazos & Colorado Railway Company. After

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the passage of the act of Aug. 16th, 1876, and before its repeal in 1882, appellant constructed about 163 miles of railroad from San Antonio westward towards El Paso, for which the State refused to issue land certificates, the governor refusing the application for inspection on May 22, '82, on the ground that the law granting certificates had been repealed.

"Question 1. Did section 6, article 10, of the constitution of 1869 repeal all laws giving railroad companies the right to earn lands from the State by the construction of railroads; and, if so, would this repeal apply as well to the right to earn lands given through charters as through general laws?

Question 2. If the above be answered in the negative, did appellant succeed to the rights of the Buffalo Bayou, Brazos & Colorado Railway Company by virtue of the special act of 1870, said Buffalo Bayou, Brazos & Colorado Railway Company being restricted by special act of February 11th, 1854, to run its line to Austin?

Question 3. If the laws as to land grants to railroads passed prior to 1869 were repealed by the constitution of that year, can appellant interpose and maintain in this suit the equitable defense that if the certificates issued for that portion of the road between the Colorado and Guadalupe rivers from 1870 to 1876 were illegally obtained that the State is in no position to ask the relief sought by reason of the fact that appellant has earned the certificates for said 163 miles of road?

Question 4. If the last question be affirmatively answered, would the fact that at the time the land for the 163 miles west of San Antonio was earned by appellant the public lands were ex-
157 hausted affect the equities of the case?"

1. Our opinion upon the second question certified renders, we think, a decision of the first unnecessary. We therefore pass to a discussion of the second.

2. The Buffalo Bayou, Brazos & Colorado River Railroad Company was incorporated by a special act of the legislature, to which there were several amendments. Its name was changed to that of the Galveston, Harrisburg & San Antonio Railway Company, also by special act. The statement accompanying the question does not expressly advise us whether these acts were pleaded and proved upon the trial or not. However, the briefs of the parties which were filed in the court of civil appeals and which are sent up with the certificate indicate that they were. Since it is impossible for us to properly decide the questions submitted without having before us the legislation upon which the company bases its claim to the lands in controversy, we conclude that the special acts of the legislature affecting that claim were properly brought to the knowledge of the trial court, and that the questions have been certified upon that assumption. We shall therefore discuss the points presented, assuming that we are to look to all the legislation upon which the company's claim depends.

The act incorporating the Buffalo Bayou, Brazos & Colorado Railroad Company was approved February 11, 1850. By that act the company was authorized to construct and maintain a railroad

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"commencing at any suitable point on Buffalo bayou between Lynchburg and Houston, in the county of Harris, and thence running by such course and to such point at or near the Brazos river between the towns of Richmond and Washington, inclusive, as said company shall deem most suitable, with the privilege of making, owning, and maintaining such branches of said railway as they may deem expedient" (Laws 1849–'50, p. 194). No privilege of acquiring lands was granted by this act, but another special law was passed by the fourth legislature, and was approved January 27, 1853, which authorized the commissioner of the general land office to issue to the company certificates to the amount of eight sections of land for each mile of road that should be completed and put in good running order under certain restrictions not necessary
158 to mention (Special Laws 1853, p. 3). On the 30th day of January, 1854, a general statute was approved by the governor, which granted to all railroad companies which had theretofore constructed or which should thereafter construct twenty-five miles of railroad certificates to the amount of sixteen sections of land for each mile of road (Laws 1853–'4, p. 11). This act also contained conditions and restrictions which we need not detail in this connection.

The same legislature passed two special acts, one amendatory of the charter of the Buffalo Bayou, Brazos & Colorado Railroad Company and the other supplemental thereto, the first of which provided "that the 'Buffalo Bayou, Brazos & Colorado Railroad Company' shall be entitled to all the rights, privileges and benefits accruing from any general law or laws that have or may hereafter be passed by this State to encourage the constructing of railroads in the same manner and to the same extent as if the gauge of said road was the same now fixed or which may be hereafter fixed upon by this State."

By the second it was provided "that if the Buffalo Bayou, Brazos & Colorado Railroad Company shall avail themselves of the act to which this is a supplement or accept any donation of land from the State, they shall not be entitled to receive any such donation from the State under the provisions of this law, or any law that has heretofore been passed for their benefit, for any portion of their road which shall not be completed and ready for use within ten years from and after the passage of this act: Provided, that said company shall restrict themselves to the following route, viz: To an extension of their existing road to Austin in the county of Travis, crossing the Brazos river at any point between the towns of Richmond, in Fort Bend county, and Hidalgo Falls, in Washington county, and with the right of extending their road from Austin to connect with any road running north of Austin toward the Pacific ocean: Provided, such connections be made between the ninety-sixth and ninety-eighth parallels of longitude; and provided further, that said company shall have no right to build branches from their main road."

Both these acts were approved February 4, 1854. Whether or not the company ever accepted the benefits of these acts the meager

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statement of the court of civil appeals does not advise us; but since the act of July 27, 1870, which changed the name of the company to its present name under certain conditions, authorizes an
159 issue of certificates to the amount of sixteen sections per mile for such portions of the road as had been constructed before the war, but not within the time provided by the act of January 30, 1854, we infer that it did so accept.

During the period of the civil war two laws were passed which had the effect to relieve the existing railroad companies from the limitations as to time embraced in the act of 1854 until two years after the close of the war; and on the 13th of November, 1866, an act was approved which contained the following section: "Be it enacted by the legislature of the State of Texas that the grant of sixteen sections of land to the mile to railroad companies heretofore or hereafter constructing railroads in Texas shall be extended, under the same restrictions and limitations heretofore provided by law, for ten years after the passage of this act."

The special act of July 27, 1870, recognized the present company as the purchaser of the franchises, rights, and property of the original company, which had been "sold out," and as its successor, and changed the name to that of the Galveston, Harrisburg & San Antonio Railway Company and amended its charter in important particulars. We quote so much of that law as is deemed necessary for the purposes of this opinion: "Whereas on the seventh July, 1868, 'the road-bed, track, franchises, and chartered rights and privileges' of the Buffalo Bayou, Brazos & Colorado Railway Company were sold on executions issued on judgments against said company, and on the 24th January, 1870, the railroad of said company from Harrisburg to Alleytown and its franchise, rights, and other property appertaining thereto were sold under the provisions of a mortgage or deed of trust made by said company on the first November, 1860, all of which appears of record; and

"Whereas the act of December 19, 1857, 'supplementary to and amendatory of an act to regulate railroad companies,' provides that the purchasers at such sales and their associates 'shall be entitled to have and exercise all the powers, privileges, and franchises granted to the company sold out' by its charter or by virtue of the general laws of this State, and 'shall be deemed and taken to be the true owners of said charter and corporators under the same, and vested with all the powers, rights, privileges, and benefits thereof;' and
160 "Whereas the purchasers at said sales and their associates have formed a new company under said old name and have expended large sums of money in the reconstruction of said railroad, in the purchase and completion of the Columbus Tap railroad and the bridge of the Brazos Iron Bridge Company over the Brazos river at Richmond; and whereas said new company desires to be distinguished by name from said 'sold-out' company, to consolidate its property, and to extend said line of railroad, therefore:

"SECTION 1. Be it enacted by the legislature of the State of Texas,

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That the new company heretofore known as the Buffalo Bayou, Brazos & Colorado Railway Company, referred to in the preamble of this act, shall be here*tofore* known by the corporate name of 'the Galveston, Harrisburg & San Antonio Railway Company,' and may alter its seal to conform to its name; provided that said new company shall be liable to the State of Texas for the debt of said 'sold-out' company, for loans made to the latter company from the special school fund, in the same manner and to the same extent as said 'sold-out' company was liable; and that said change of name shall in no respect impair or affect said liability or the existing lien or mortgage of the State upon the railroad of said company as security for said loans."

But the constitution which was in force at the time the last-named act was passed contained this provision: "The legislature shall not hereafter grant lands to any person or persons, nor shall any certificates for land be sold at the land office, except to actual settlers upon the same, and in lots not exceeding one hundred and sixty acres." (Cons. 1869, art. 10, sec. 6.)

In so far as the determination of the question under consideration is concerned we think it may be conceded for the purposes of the argument that the company acquired a right to sixteen sections of land per mile of constructed railroad under the general law of 1854 and the special acts above recited amendatory of its charter, and that this rignt was preserved by the general law of 1866. It may also be conceded for the same purpose that section 6 of article 10 of the constitution of 1869 was intended to have purely a prospective effect and did not operate to repeal either the law of 1854 or that of 1866 as to railroad companies then in existence, for if it should be held that the privileges extended by the previous laws to existing companies *was* not affected by the section the question arises
161 whether after that constitution took effect and act of the legislature which authorized the company to change its former route and to construct a different line of road would carry with it the right to acquire land by the construction of the new line. It must be borne in mind that when the constitution of 1869 was adopted no general law was in force for the incorporation of railroad companies. The charters of all the other existing companies had been granted by special acts of the legislature, all of which defined with some degree of certainty the line of the road to be constructed. We construe the general law of January 30, 1854, as applying only to companies then chartered. (See Quinlan *vs.* H. & T. C. R'y Co., this day decided.) It is clear that it was intended to grant lands to the companies for the construction of railroads which their charters authorized them to build. It may be conceded that, so long as the general law which granted the privileges of acquiring lands remained in force, and so long as no constitutional inhibition stood in the way, legislative authority to a company to change the line to be constructed should be construed to carry with it the privilege of earning lands for the construction of the new line. At all events, it is clear, we think, that the act of February 4, 1854, supplemental to the act of the same date, which extended the privileges of the gen-

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eral law of January 30, 1854, to the company, restricted those privileges to the line to Austin and to the extension of that line. The proviso "that said company shall restrict themselves to the following route, viz., to an extension of their existing road to Austin," admits of no other construction. The purpose and effect of the first section of the act of November 13, 1866, was merely to give to the companies to which it applied ten years from the date of the act within which to comply with the terms of their charters and the general laws with respect to land grants. Let us admit, then, for the purposes of the argument, that in 1970, when the name of the company was changed and when it was granted authority to alter the line to be constructed, that it had the right to acquire lands by the construction of its line as fixed by the supplemental act of February 4, 1854, we are still confronted with the question, did the legislature have the power, had it so intended, so to authorize a change of its line and at the same time to carry with the change of line the privilege of earning lands for the construction of a different road? Section 6 of article 10 of the consti-
162 tution then in force prohibited the legislature from granting lands thereafter for the construction of a railroad. That it could authorize a change of route there can be no question; but there is a grave question whether or not it could, under the constitution then existing, transfer a privilege of acquiring lands by the construction of a well-defined line of railroad from the route so defined to another not contained in the previous grant. The company before the passage of the act of 1870 had no right to acquire lands by the building of a railroad to San Antonio. To complete that right a new grant was requisite, but at that time the legislature was prohibited in the broadest terms from making any grant whatever. It matters not that the transaction may be looked upon as being somewhat in the nature of an exchange, and that the building of the new line may have involved a grant of no more, or even of less, land than may have been acquired by the construction of the old line. It involved a grant of land as to the new line, and that the legislature had no right to make. Let us state the proposition in another form: If it were the right of the company under the existing laws to acquire lands by doing a specific thing, the legislature, having no power under the constitution to make any grant of lands, could not confer upon it the right to earn lands by doing another—a different—thing.

So far we have discussed the question as if in passing the act of 1870 the legislature had intended to transfer the right of the company as to the lands to be acquired from the old to the new line; but we find nothing in the act which manifests such an intention. On the contrary, the twelfth section of the act, as above quoted, indicates that it was not the purpose in any manner to extend the existing rights of the company with reference to the acquisition of lands from the State.

It is to be noted that the 3rd section of the act of 1870 not only authorized the company to change its route so as to run to San Antonio instead of Austin, but in addition thereto reserved to it

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the right to build upon the route formerly designated by the sold-out company. It is evident, therefore, that to concede to the company the right to earn lands by the construction of the new line involves a new and additional grant—a grant which the legislature under the constitution of 1869 could have made neither expressly nor by implication.

163 This question was before this court at a former term in a suit between the same parties, and the point was there resolved as we resolve it now (G., H. & S. A. R'y Co. *vs.* State, 81 Tex., 572); but it is urgently insisted that the question was not involved in that case. Without conceding the correctness of this contention, in view of the magnitude of the interests involved in the present case, we have gone over the question anew and, without reposing upon the former decision, have arrived at the same result. We are therefore of the opinion that the Galveston, Harrisburg & San Antonio Railway Company did not by virtue of the act of July 27th, 1870, acquire the right to earn lands by the construction of its line to San Antonio.

3. Referring to the third question certified by the court of civil appeals, we are of the opinion that it is no defense to an action of the State for the recovery of the lands involved in this suit that the company may have been entitled to certificates for the 163 miles of additional road constructed under the law of 1876. It acquired no title, either legal or equitable, to the lands in controversy by causing them to be surveyed and patented under the certificates granted for the San Antonio extension. To make its right to lands earned by the additional construction effectual for any purpose it must have procured its certificates and located them upon some portion of the public domain not reserved from the location of such certificates. Our complicated and ever-varying laws in regard to the appropriation of the public domain have probably given rise to more questions affecting the location of lands than have ever arisen in any other jurisdiction, and yet we know of no case in this court in which it has ever been ruled that the claimant of land against the State under a location made by virtue of a void certificate has any equity in the premises by reason of being the possessor of another valid certificate.

4. The third question not having been answered in the affirmative, the fourth does not arise.

R. R. GAINES,
Chief Justice.

Opinion delivered March 19, 1896.

* * * * * * *

164 CLERK'S OFFICE, SUPREME COURT.

I, Chas. S. Morse, clerk of the supreme court of Texas, hereby certify that the above and foregoing eight pages contain a true and correct copy of the opinion of the supreme court of Texas in cause No. 260, entitled Galveston, Harrisburg & San Antonio Railway Company *vs.* The State of Texas, on questions certified to this court from the court of civil appeals of the fourth supreme judicial district.

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Witness my hand and the seal of said court this the 17th day of April, A. D. 1896.

CHAS. S. MORSE, *Clerk*,
[SEAL.] By F. T. CONNERLY, *Deputy*.

MARCH 19TH, 1895.

GALVESTON, HARRISBURG & SAN ANTONIA RAILWAY COMPANY *vs.* STATE OF TEXAS. } No. 260. Certified Questions from Fourth District.

Opinion delivered by Chief Justice Gaines.

"It is ordered by the court that a copy of the opinion herein delivered be certified to the court of civil appeals for the fourth supreme judicial district, and that said cause be therein proceeded with in accordance with said opinion."

* * * * * * *

I, Charles S. Morse, clerk of the supreme court of Texas, hereby certify that the above is a true and correct copy of the order made by the supreme court in the above styled and numbered cause.

Witness my hand and the seal of said court this the 17th day of April, A. D. 1896.

CHAS. S. MORSE, *Clerk*,
[SEAL.] By F. T. CONNERLY, *Deputy*.

(A motion for a rehearing made by the appellant, The Galveston, Harrisburg & San Antonio Railway Company, was overruled
165 by the supreme court on the 16th day of April without written opinion.)

Endorsed: No. 260. Galveston, Harrisburg & San Antonio Railway Company *vs.* State of Texas. Certified copy of opinion and order of the supreme court. Filed in the court of civil appeals, at San Antonio, Texas, Apr. 18, 1896. H. E. Hildebrand, clerk.

Bill of Costs on Certified Questions.

CLERK'S OFFICE, SUPREME COURT.

G., H. & S. A. R'Y CO. *vs.* STATE OF TEXAS. } No. 260. Brewster Co.

Certified copy bill of costs in supreme court.

Filing record	50
Docketing cause	50
Entering appearance	1 00
Filing briefs & arg'ts (19)	5 70
Filing 1 extra paper	30
Filing and entering 1 motion	55

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Entering judgment	1 00
Taxing costs	50
Certified copy of bill of costs	1 00
Recording opinion	6 50
Certified copy of opinion	6 50
Orders	1 50
2 notices to counsel	2 00
Cert. copy of judgment to C. C. A.	1 00
Total	$28 55

I, Charles S. Morse, clerk of the supreme court of Texas, hereby certify that the above copy of the original bill of costs is true and correct.

Witness my hand and the seal of said court, at Austin, [SEAL.] this the 17th day of April, 1896.

CHAS. S. MORSE, *Clerk.*

Endorsed: No. 260. Certified copy bill of costs in supreme court, Austin. G., H. & S. A. R'y Co. *vs.* State of Texas. $28.55. Filed in the court of civil appeals, at San Antonio, Texas, Apr. 18, 1896. H. E. Hildebrand, clerk.

166 *Conclusions of Fact.*

THE G., H. & S. A. R'Y CO., Appellant, *vs.* THE STATE OF TEXAS, Appellee. } No. 385. Appeal from Brewster County.

Conclusions of fact.

It is agreed that the defendant company received from the State and located the certificates described in plaintiff's petition, and that said petition contained a true statement of the number of certificates issued, the number of each certificate, the number of acres, the date when certificates were issued, the counties in which located, the section of road for which said certificates issued, as well as the number of miles of main track and sidings in each section, and whether the same has been patented and the date of the patents.

It is further agreed that the defendant railway company begun the construction of the first section of its road, that part of its road for which certificates in this suit were issued, at the point of junction with the old line of the Buffalo Bayou, Brazos and Colorado railroad, at a distance of 493 feet west of the west approach to the bridge over the Colorado river, and ending at the west end of west approach over the West Navidad river, subsequent to July 27, 1870, and completed the same December 19, 1873.

That the second section of defendant company's road, from the "western side of the western approach to the bridge over the West Navidad river and ending at the center of a red sandstone culvert, the first one east of Buck's branch," was constructed and completed between July 27, 1870, and June 25, 1874

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That the third section of defendant company's road, from a "red sandstone culvert, the first one east of Buck's branch, and ending at the turn-table at Luling," was constructed and completed between July 27, 1870, and January 16, 1875.

That the fourth section of defendant company's road, between "the station-house at Luling and ending at the west ending of the siding at Kingsbury," was constructed and completed between July 27, 1870, and July 12, 1875.

That the fifth section of the defendant company's road, between
"the east pier of the Guadalupe bridge, thence eastward, end-
167 ing at a point opposite the depot door at Kingsbury or the west end of the siding where the last inspection terminated," was constructed and completed between July 27, 1870, and October 27, 1876.

That that portion of the road of defendant company between the Colorado river and San Antonio was completed to San Antonio Feb. 13, 1877.

That said railroad was thereafter constructed and put in running order and operated from said beginning, at the bridge over the Guadalupe river, to El Paso, in El Paso county, being a distance of — miles.

It is further agreed that the charters and special laws relating to defendant's company and relating to grants of land to railroad companies may be used on the trial in evidence and considered without the necessity of incorporating the same in the statement of facts, as well as all special laws incorporating railroads and other laws, general and special, granting lands and land certificates for works of national improvements.

Any other pertinent fact may be introduced by either party on trial.

There are now remaining and belonging to the State of Texas — acres of public domain reserved since 1879 from location by certificates.

Defendant paid taxes on land- sued for continuously since they were located up to the present time, which was received by the State of Texas and by it used as other taxes are used by the State.

Defendant paid all fees for locating and surveying the said lands sued for as well as the same number of alternate sections, known as the even-numbered, for the public free-school fund and have paid all surveying fees and all fees to the commissioner of the general land office in respect thereto and all sums of money necessary for its protection and in the way of betterments for the preservation of the same, etc.

The said certificates for land described in plaintiff'- petition were issued to it after the said railway company had completed and after the governor had appointed an engineer to examine the same and report; which engineer did examine the same and report to the governor the condition of said road; and thereupon the governor approved the report; and thereupon the land commissioner issued
certificates to said railway company, signed by the commis-
168 sioner of the general land office, calling for main line and sidings, not separating the sidings from the main line.

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At the time of the act of Jan'y 30, 1854, became a law E. M. Pease was governor of the State of Texas. It was by his approval as such governor that the bill passed the legislature and became a law.

The first certificates that were issued under the act of Jan'y 30, 1854, were authorized and directed to be made by the said E. M. Pease, whose term of office had not then expired.

These certificates were issued upon a report made by Tipton Walker, engineer, appointed by Governor Pease in pursuance of the provisions of said act, which report bears date of March 24, 1856, and is now on file in the proper department of the State in the capitol at Austin.

In this report said Tipton Walker specially states that the railway company to whom said certificates were issued had completed of its main line a certain number of miles, and also states the length of sidings that had been constructed.

Upon receiving this report the said E. M. Pease, as governor as aforesaid, in a letter addressed to Hon. Stephen Crosby, commissioner of the general land office, under date of March 31, 1856, advised said Crosby, as such commissioner, that the president of the railway company making application for said certificates had notified him (the governor) that said railway company had completed and put in running order a section of twenty-five miles and more of its road; that, there being no State engineer, he had appointed, under the act of Jan'y 30, 1854, Tipton Walker, engineer, to examine said section of road, and that he then enclosed a copy of said report under oath, with the affidavit accompanying the same from the said engineer, that said engineer reported that said section, containing (with the necessary turnouts) 32.12 miles, is constructed in accordance with the provisions of its charter and the general laws of the State in force regulating railroads.

The various engineers appointed by the different governors to inspect railways as the same were constructed in their respective reports of inspection to the respective governors stated the number of miles and feet of main track, the number of miles or feet of bridges, culvert, and tressels, the number of depots, cars, engines, weight of iron, and width and character of track and grade. The action of the respective governors (except Governor Roberts)
69 on said reports *were* usually in the following words: "Reports examined and approved," upon which reports and action of the respective governors the commissioner of the general land office issued to the respective companies the certificates for main track and sidings.

During the administration of Governor Roberts the reports of the engineers were in substance and form of those made to other governors, but he approved for only the number of miles of main track stated in the reports.

In one instance during the administration of Governor Davis he approved one report for sidings exclusively, for which certificates were issued in the usual amount per mile. This was also done in one instance by Governor Hubbard, for which certificates issued. On March 13, 1877, Governor Hubbard made the following endorse-

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ment on one of the reports: "This report of Inspector Gray examined and approved for thirty miles of main track and sidings as being made, graded, and in all respects complying with the law." In many cases patents were issued on said certificates for both main line and turnouts, and in some cases did not separate the quantity of land for main line from the quantity of land for sidings.

The said railway company had expended large sums of money as aforesaid in the work of surveying such lands, locating and correcting the same; also in preserving said railway company and enabling it to perform the duties incumbent upon it as a common carrier, and has paid large sums of money by way of taxes to the State of Texas.

Said lands have been surveyed in all respects as the law requirelands to be surveyed for railway companies, by virtue of the donations or grants of land, into tracts of six hundred and forty acres, where the same could be done, surveying an equal amount for the benefit of the school fund, the field-notes of which were recorded and are now in the proper surveyor's office; that maps, plats, and sketches thereof were duly made, which, with the field-notes and certificates, have been duly returned to the general land office of the State of Texas within the time required by law and have remained on file in the land office ever since; that the same were duly platted upon the maps of the general land office of the State of Texas and suitably marked as the lands of the railway company. The maps of the same are in use of the land office of the State of Texas now. The odd sections recognized as said railway company's lands and
170 maps thereof have been furnished to the county surveyors in all the counties where the said lands are situated and are now in their possession and control, showing said lands platted thereon, and recognized by the State of Texas, through the officers, as the lands granted to said defendant railway company.

The following commissioners have issued land certificates for sidings as well as for main line, to wit, Stevens, Crosby, White, Kuechler, and Groos.

During the administration of the following governors land certificates were issued for sidings and main line to the railway companies named as follows:

Gov. E. M. Pease:

To the Buffalo Bayou, Brazos & Colorado R. R.

Gov. H. Runnels:

To the Southern Pacific R. R. Co.
To the San Antonio & Mexican R. R. Co.

Gov. Sam. Houston:

To the Southern Pacific Railroad Co.

Gov. Edward Clark:

To the Washington Co. R. R. Co.
To the B. B., B. & C. R. R. Co.

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Gov. J. W. Throckmorton:

To the T. & N. O. R. R. Co.
To the Washington Co. R. R. Co.

Gov. E. J. Davis:

To the G., H. & S. A. R. R. Co.
To the Galveston, Houston & Henderson R. R. Co.
To the Indianola R. R. Co.
To the Texas Pacific Railroad Co.
To the Houston & Great Northern R. R. Co.
To the Houston & Texas Central Railway Co.
To the Waco & Northwestern R'y Co.

Gov. Richard Coke:

To the Texas & Pacific Railroad Co.
To the Houston & Great Northern R. R. Co.
To the Gulf, Colorado & Santa Fe R'y Co.
To the Galveston, Harrisburg & San Antonio R. R. Co.

Gov. R. Hubbard:

To the Texas Pacific R. R. Co.
171 To the Houston & Great Northern R'y.
To the Gulf, Colorado & Santa Fe.
To the Denison & Southeastern.
To the East Line & Red River R. R.
To the Tyler Tap R. R.
To the Houston, East & West Texas R. R.
To the Georgetown.
To the Dallas & Wichita.
To the Galveston, Harrisburg & San Antonio R. R.
To the Texas Western.

The lands were surveyed and located and certificates issued as shown by the statement in plaintiff's petition.

The defendant company completed its line of railway from San Antonio to El Paso and to Rio Grande river, in El Paso county, beginning on the — day of ——, a distance of 623.14 miles, and ending on the — day of ——, 18—, for which it never received any certificates for land. H. B. Andrews, as vice-president of the Galveston, Harrisburg & San Antonio Railway Company, made application to His Excellency O. M. Roberts, governor of the State of Texas, to appoint a civil engineer to examine and inspect said portion of completed line, which application was refused by Gov. Roberts.

The act legalizing the organization of the Buffalo Bayou, Brazos and Colorado R. R. Co. was approved September 4, 1850.

The Southern Pacific Railroad Company was chartered August 16, 1856. The San Antonio and Mexican Gulf Railway Company was chartered Sept. 5, 1850. The Washington County Railroad Company was incorporated February 2, 1856.

The Texas and New Orleans Railroad Company was incorporated prior to Feb'y 7, 1861.

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The Galveston, Houston and Henderson Railroad Company was incorporated February 7, 1853.

The Indianola Railway Company was incorporated Jan'y 21, 1858.

The Texas & Pacific Railway Company was not chartered by the State of Texas.

The Houston & Texas Central Railway Company was incorporated September 1, 1856.

The Waco Tap Railroad Company was incorporated in 1856.

By act of May 24, 1873, the Waco and Northwestern Rail-
172 road Company was merged with the Houston & Texas Central Railway Company.

The Gulf, Colorado and Santa Fe Railroad Company was incorporated May 28, 1873.

The Denison and Southeastern Railroad Company was chartered July 27, 1877.

The East Line and Red River Railroad Company was incorporated by an act of March 22, 1871.

The Tyler Tap Railroad Company was incorporated by act of December 1, 1871.

The Houston, East and West Texas Railway Company was incorporated by act of March 11, 1875.

The Georgetown Railroad Company was chartered May 31, 1878.

The Dallas and Wichita Railroad Company was incorporated December 2, 1871.

The Texas Western Railroad Company was incorporated February 16, 1852.

The Columbus Tap Railroad Company was incorporated Febr'y 2, 1860.

The Gulf, Western Texas and Pacific Railroad Company consolidated with the Indianola and San Antonio Railroad Company Aug. 4, 1870.

The Galveston, Brazos, Colorado, N. G. railroad was incorporated Feb'y 2, 1875.

The defendant company located the land sued for by virtue of 315 certificates out of 415 issued on the first section of that portion of its road from the Colorado river to the Guadalupe bridge; the 407 certificates of the 433 issued on the second section of its road; the 308 certificates issued on the third section of its road; 91 certificates of the 192 issued on the fourth section of its road, and the 262 certificates issued on the fifth section of its road, said sections of road being as heretofore referred to in this agreement.

That the railroad company long prior to the institution of this suit executed mortgages for large amounts of money to secure issue of bonds. The mortgages were secured upon the following property: The line of road and its franchise and on all the lands, locations, surveys, land scrip, and rights to lands that have been or may be hereafter acquired by said company for the construction of its railroad from Harrisburg to San Antonio by virtue of any general or special acts of the legislature of the State of Texas making donations of lands.

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Some of said mortgages are each for the sum of $20,000.00 per mile of the road. One of said mortgages is the mortgage
173 mentioned in defendant's plea in which George F. Stone is the sole surviving trustee, and it shall not be necessary to further describe the said mortgages. The said mortgages and bonds which they secure were issued and floated on the money market and money obtained for the purpose of building and constructing the railroad of defendant company and were duly recorded in the counties where lands are situated.

The railway company treated and understood, and also the holders of said mortgages so understood, that the lands sued for were embraced in and secured by said mortgages, but this point is not conceded by plaintiff.

The State refused to issue and grant any certificates to the defendant company for any part of the road constructed west from San Antonio to El Paso, which is a distance of 623.14 miles of road. The construction of that part of the railroad began west at Columbus in March, 1873, and was completed to the West Navidad about Jan'y 1, 1874.

The road was opened for business on the following dates: Weimar, Nov. 16, 1873; Schulenburg, Dec. 1, 1873; Flatonia, April 16, 1874; Waelder, July 1, 1874; Luling, Sept. 1, 1874; Kingsbury, July 23, 1875; Seguin, August 10, 1875; Guadalupe river, August 10, 1876.

Construction west of San Antonio began in May, 1881. The first grading at Rio Grande river near El Paso was done on March 28, 1881. The construction of the road was finished from El Paso eastward Dec. 27, 1882. The road was opened for business west from San Antonio and El Paso at La Coste, 25 miles, Oct., 1881; at Hondo, 50 miles, 1881; at Sabinal, 71 miles, Oct. 24, 1881; at Uvalde, 93 miles, Nov. 21, 1881; at Eagle Pass junction, 132 miles, March 6, 1882; at Del Rio, 170 miles, June 23, 1882. Construction west from San Antonio and east from El Paso met in January, 1883.

W. P. Hardeman inspected the road west from San Antonio under appointment of Governor Roberts first and afterwards under contract with Mr. Pierce, who was then the president of the railway company.

The first inspection was made on June 27 and 28, 1881, for eleven miles; balance made not long after the repeal of the law.

The work west of San Antonio began June 4, 1881. From Leona river to a short distance west of Del Rio the road was completed before April 22, 1882, a distance of $163\frac{6}{10}$ miles. Inspected the road under contract with Pierce from Rio Grande above
174 El Paso, 268 miles, to a point near Marathon, pointed out by chief engineer, Mr. Linburg, as the point to which the road was completed April 22, 1892.

Inspected all that was completed to 22 April, 1882; don't know the exact date; but what he did inspect he found complete and in running order and in other respects according to law.

The unappropriated public domain was as follows at the dates given:

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Aug. 31, 1872	88,842,704½
Aug. 31, 1873	84,565,367.91
January 24, 1874	83,783,750.91
Aug. 3, 1874	79,227,793.1

At the following round dates the unappropriated public domain, according to the then commissioner of the general land office, had ceased to exist and the State's land liabilities exceeded its land assets, to wit:

Aug. 31, 1882.	Deficiency	6,136,615 acres.
Aug. 31, 1884.	"	6,745,723 "

At date of land commissioner's report, Aug. 31, 1892, excess of public domain over liabilities was estimated at 745,666 acres. Change from liability in 1883 to excess in 1892 was caused by the non-return of certificates within the constitutional limitation of five years from date of issuance or to their location on reserved lands rendered them void unless floated as provided by law.

An approximate estimate of the unappropriated public domain reserved from location by certificate and sale made Jan'y 12, 1893, make the number of acres of such land 4,393,835.

Reservation was first made by the act of July 14, 1879, which took effect Oct. 9, 1879. The number of acres of the unappropriated public domain was at that time, approximately, 31,025,298, as per report of the commissioner of this office.

(Signed) W. S. FLY,
Associate Justice.

Endorsed: No. 385. In court of civil appeals, fourth supreme judicial district of Texas, San Antonio. G., H. & S. A. R'y Co., appellant, *vs.* State of Texas, appellee. Conclusions of fact. Filed in the court of civil appeals, at San Antonio, Texas, Apr. 29, 1896. H. E. Hildebrand, clerk.

175 *Opinion.*

GALVESTON, HARRISBURG & SAN ANTONIO R'W'Y CO., Appellant, *vs.* THE STATE OF TEXAS, Appellee. | No. 385. Appeal from Brewster Co.

This suit was instituted on the 5th day of January, 1893, by C. A. Culberson, attorney general of the State of Texas, in behalf of the State, to recover 1,383 tracts of land, containing in the aggregate eight hundred and seventy-nine thousand and seventy acres of land situated in the counties of Jeff Davis, Presidio, Brewster, Kimble, San Saba, Val Verde, Crockett, McCulloch, Pecos, Buchel, Reeves, Schleicher, Sutton, and Zavalla, and to cancel patents issued to appellant for said land. After setting out the land sued for and the locating of certificates on it by appellant, it was alleged that the Buffalo Bayou, Brazos and Colorado Railroad Company was chartered by a special act of the legislature of date February 11, 1850;

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that by that special act said company and appellant as its successor was authorized only to build an extension of its railroad to the city of Austin and to a line extending north from Austin to connect with some road running north of Austin to the Pacific ocean; that said railroad companies were not entitled to receive any lands for the construction of any road from Columbus to San Antonio and westward for which appellant has received land certificates; that by the special act of the legislature of the State of Texas approved July 27, 1870, the name of the Buffalo Bayou, Brazos & Colorado Railroad Company was changed to the Galveston, Harrisburg & San Antonio Railway Company, and by its provisions appellant was for the first time given authority to extend its road from Columbus to San Antonio, for which the land certificates in question were issued, and that at the time of their issuance the constitution of 1869-'70 forbade the legislature to grant lands to railway companies for the construction of their roads; that there were issued to appellant at different times 1,610 certificates by the commissioner of the general land office of Texas for a line of road from Columbus to the east pier of the bridge across the Guadalupe river, all of which road was constructed between July 27, 1870, and October 27, 1876; "that at no time during said period was there any law in existence in this State authorizing the issuance of land certificates to the de-
176 fendant company for main track or sidings, and especially does the plaintiff aver and represent that at no time during said period was there any law in existence authorizing the issuance of certificates to said company for the construction of its line of road between Columbus and the Guadalupe bridge." It was therefore charged that the certificates were unlawfully issued and were null and void.

On the 6th day of March, 1893, appellant filed a petition for removal of the cause to the circuit court of the United States, which was overruled.

On March 13, 1893, appellant filed its answer, setting up that it had in 1880 mortgaged the land in controversy to Andrew Pierce and George Stone; that Pierce was dead and Stone was the sole surviving trustee, and that Stone was a necessary party to the suit. Appellant also pleaded general denial and specially pleaded all its charters and all laws, general and special, of the State of Texas by which it became entitled to the lands claimed by it.

Defendant further answered, among other things, that it was provided in section 11 (of the charter granted in 1870) that said new company shall be entitled to the same or similar rights and relief (except State aid in bonds or endorsement or guarantee of interest on bonds) granted to or provided for any other railroad company by the legislature, and upon the same or similar terms and conditions as far as such rights and relief are in their character applicable to said new company or its line or lines of railroad.

Defendant pleaded specially, as aforesaid, its title at length, and, further, the amendment of the constitution of 1873, and pleaded, further, that upon the adoption of the said amendment to the constitution the legislature of Texas proceeded to grant to and provide

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for a large number of railroads rights to sixteen sections of land to the mile of completed road; and defendant thereupon proceeded to construct its road from Columbus to the Guadalupe river, and defendant constructed the same, relying in good faith upon the promise, agreement, and undertaking of the State, as fully set forth in said section 11 of its charter of 1870, and defendant from time to time received the lands sued for as said construction proceeded.

On the 16th day of August, 1876, the legislature passed a general law granting sixteen sections of land per mile to railroads, and on the 22nd day of April, 1882, the legislature repealed all
177 laws granting lands to railroads.

Defendant also claimed that it was entitled to the lands for the following reasons, to wit:

First. By reason of the legislation, charters and amendments thereto, and the general laws applicable to railroad companies passed prior to the constitution of 1869, which secured its rights to the land and which could not be impaired by any subsequent legislation without violating the provision of the Constitution of the United States.

Second. Because it was entitled to the land by virtue of the act of the legislature passed July 22, 1870, and by virtue of the amendment to article 10, section 6, to the constitution of 1869.

Third. It is entitled to said land by virtue of the provisions of section 11 of said act of 1870 supplementary to its charter, and by reason of the fact that subsequent to the amendment to the constitution made in 1873 the legislature proceeded to and did make numerous and specific grants of sixteen sections of land per mile of completed road to other roads in this State; and defendant, relying upon the provisions of its charter, commenced and continued the construction of its road in good faith and in reliance upon the recognition and performance by the plaintiff of its obligation to accord to defendant equal rights with other roads in favor of which special land grants of sixteen sections of land to the mile of completed road had been made.

Fourth. Because if it was not otherwise entitled thereto it was entitled to have lands by force and virtue of the act passed August 15, 1876, and by reason of the fact, on the faith and in reliance upon the provision of said act, the defendant constructed that portion of its road between San Antonio and El Paso, amounting to 623.14 miles, which entitled it to receive from the State sixteen sections of land for each mile, amounting in the aggregate to 6,380,953.6 acres of land, which was constructed subsequent to August 15, 1876.

Defendant further averred by reason of the action of the executive officers of the State in construing the law, appointing engineers to inspect the road, the report of such engineers, the action of the governor thereon, the issuance of certificates, the survey and location of the land, maps and plats thereof filed in the office of the commissioner of the general land office, and also in the surveyor's office, and the State officers fully recognize them to be the lands of the G., H. & S. A. R'y Co. for a period of many years; the
178 decisions of the highest court in the land establishing the rule of property, the payment of large sums of money by

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defendant in surveying and locating the lands, the payment of taxes, patents, and betterments which the State has made no provision to pay or to return to defendant; and during a period of more than ten years the State of Texas and her officials have stood by and allowed the assertion of title to said lands by the railway company, permitting the lands to be mortgaged and money obtained in the money markets of the world; the State is estopped from the recovery of the lands in this cause, and that the same is a stale demand.

Defendant also prayed for affirmative relief and, if within the power of the court, for judgment for the said land certificates which have not been issued, requiring the same to be issued to defendants, and praying the court for such affirmative relief in the premises as it was entitled to.

The cause was tried on September 13, 1893, and judgment was rendered in favor of the State of Texas for all the lands sued for. Finding that the statement of facts is as much condensed as we could make it in justice to the parties, we have with a few emendations adopted it as our conclusions of fact.

The first and second assignments presenting the error in the refusal to remove this cause from the State to the Federal court cannot be sustained. The points therein presented have been decided by the Supreme Court of the United States adversely to the contention of appellant. State of Tennessee *v.* Bank of Commerce, 152 U. S., 454. In that case it was held that "a cause cannot be removed from a State court simply because in the progress of the litigation it may become necessary to give a construction to the Constitution or laws of the United States." The trustee in the mortgage, George F. Stone, was not a necessary party to this suit. Mortgagees are not necessary parties to actions of trespass to try title brought against mortgagors. If the State was willing to run the risk of another lawsuit with the mortgagee, it does not concern appellant. Its title was not strengthened or weakened by the existence of the mortgage.

We are of the opinion that the illegal acts of the land commissioner in granting the land certificates and of the governor in granting patents to the land do not estop the State of Texas from recovering the lands sued for. The State cannot be estopped by the acts of any of its officers done in the exercise of a power
179 not conferred upon them any more than it can be bound by contracts made by its officers which they were not empowered to make. The powers of all officers are defined and conferred by law, and of these all persons who deal with them must take notice. Acts done in excess of the powers conferred are not official acts. Day Land & Cattle Co. *v.* State of Texas, 68 Tex., 526.

The questions raised by the remaining assignments of errors have been certified by this court to the supreme court and have been answered adversely to appellant. G., H. & S. A. R'y Co. *v.* The State of Texas, opinion delivered March 19, 1896.

In that opinion it was held that appellant did not succeed to the rights that would have accrued to the Buffalo Bayou, Brazos and Colorado railroad had it been extended, as provided by its charter,

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to Austin, and that it was no defense to the action for the recovery of the lands involved in this suit that the company may have been entitled to certificates for the 163 miles of railroad constructed west of San Antonio under the law of 1876.

The judgment is affirmed.

(Signed) W. S. FLY,
Associate Justice.

Endorsed: No. 385. In court of civil appeals, fourth supreme judicial district of Texas, San Antonio. G., H. & S. A. R'y Co., appellant, *vs.* State of Texas, appellee. Opinion by W. S. Fly, associate justice. Filed in the court of civil appeals, at San Antonio, Texas, Apr. 29, 1896—H. E. Hildebrand, clerk—with app. No. 1143. Filed in supreme court, at Austin, Texas, July 2, 1896. Chas. S. Morse, clerk.

Judgment of the Court of Civil Appeals.

WEDNESDAY, *April* 29, *A. D.* 1896.

G., H. & S. A. R'y Co., Appellant,
vs.
STATE OF TEXAS, Appellee.
} No. 385. Appeal from District Court of Brewster County.

This cause came on to be heard on the transcript of the record, and the same being inspected, because it is the opinion of the court that there was no error in the judgment, it is therefore considered, adjudged, and ordered that the judgment of the court below be in all things affirmed; that the appellant, The Galveston, Harrisburg & San Antonio Railway Company, and its sureties, E. P. Hill and W. N. Shaw, pay all costs in this behalf incurred and this decision be certified below for observance.

180 *Motion for Rehearing.*

In the Court of Civil Appeals, Fourth Supreme Judicial District.

THE GALVESTON, HARRISBURG & SAN ANTONIO RAILWAY COMPANY
vs.
THE STATE OF TEXAS.
} Appeal from Brewster County.

Now comes The Galveston, Harrisburg & San Antonio Railway Company, appellant in the above-styled cause, by its attorneys, and moves the court to set aside the judgment rendered on the 29th day of April, 1896, in this cause, affirming the judgment of the court below, for the reasons set forth in the opinion of the court on that day filed, and for a rehearing herein, upon the grounds following, to wit:

First.

This court erred in overruling and holding not well taken appellant's first and second assignments of error, each of which com-

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plained in effect of the action and ruling of the court below in refusing appellant's application to remove this cause into the circuit court of the United States, and in proceeding with this cause after the presentation of the petition and bond for such removal. It appeared from plaintiff's petition that appellant was created by special act of the legislature of the State of Texas approved February 11th, 1850, under the name of the Buffalo Bayou, Brazos & Colorado Railroad Company; that acts supplementary to and amendatory of its charter were passed on the 4th day of February, 1854, conferring upon appellant the right to the land in question; that appellant had organized under the acts of incorporation aforesaid and proceeded with the construction of its road, and had completed the same from Buffalo bayou, at Harrisburg, to the Colorado river, at Columbus, prior to the adoption of the constitution of 1869–'70, as shown by said petition, and especially by the act of July 27th, 1870, changing appellant's name; which act was specially referred to and pleaded by the plaintiff. By the act of February 11th, 1850; the acts of February 4th, 1854; the general law of January 30th, 1854; by its organization and commencement of work under its said acts of incorporation, and by constructing and completing its line of railroad, as aforesaid,

181 from Buffalo bayou to the Colorado river prior to the adoption of the constitution of 1869–'70, all as shown by plaintiff's petition, appellant had acquired the right to lands for the construction of its line of railroad, conferred by the acts incorporating it and the acts amendatory of and supplementary thereto, and by all other laws, general and special, of the State of Texas granting lands for the construction of railroads, and the said acts of the legislature of the State of Texas so accepted and acted upon by the appellant became and were binding and valid contracts by and between appellant and the State of Texas, which could not be lawfully impaired; but it was expressly alleged in plaintiff's said petition that the constitution of 1869–'70 forbade the legislature from authorizing or granting lands to railway companies for the construction of their roads, meaning thereby in effect that the said constitution of 1869 undertook to repeal the aforesaid laws and impair and destroy appellant's contract and vested rights thereunder, and under and by virtue of its organization under its acts of incorporation and its acceptance of the terms of said laws and the construction of its railway, as aforesaid, contrary to the constitution of the United States. Under the issue presented by plaintiff's said petition and necessarily arising therefrom it was necessary to the decision of the case to determine whether the said constitution of Texas of 1869–'70 could repeal the said laws or deprive the appellant of its rights secured under the same, as aforesaid, without impairing the obligation of appellant's contract and deprive appellant of its property without due process of law, contrary to the Constitution of the United States.

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Second.

This court erred in overruling and holding not well taken appellant's third assignment of error, which in effect complained of the action of the court below in overruling and denying the appellant's plea in abatement for lack of parties. The plea (Transcript, 101) showed that on June 1st, 1880, appellant executed to Andrew Pearce and George F. Stone, trustees, a mortgage on its railway and all the land in question to secure an issue of negotiable bonds, aggregating one million dollars, which had been sold and negotiated for value and were outstanding at the institution of this suit. It further appeared from said plea that Andrew Pearce, one of said trustees, was dead, and that George F. Stone, the other trustee, by virtue of the terms of the deed became and was the sole trustee in said mortgage, and appellant pleaded that he was a necessary
182 party, as the representative of the holders of said bonds, in order that he might represent such holders in this action, which involved the security provided by said mortgage for said bonds and cast a cloud on the title to such security and impaired the value thereof.

Third.

This court erred in overruling and holding not well taken appellant's fourth assignment of error, which complained of the action of the court below in overruling appellant's general demurrer to plaintiff's petition. Said petition showed that the certificates referred to in said petition were issued at a time when there was no provision in the constitution of the State of Texas prohibiting the same and when there were laws of the State of Texas authorizing the issuance of such certificates, and said petition nowhere by sufficient averment negatived the right of appellant to such certificates under its charter and other laws of the State authorizing the same and nowhere showed by sufficient averment that said certificates, valid upon their face, were unlawfully issued by the executive department of the State government.

Fourth.

This court erred in overruling and holding not well taken appellant's fifth assignment of error, which in effect complained of the action of the court below in rendering judgment for the plaintiff and in not rendering judgment for the appellant for the lands in controversy, because it was shown by the uncontroverted evidence that the appellant was entitled to such lands by virtue of its charter and the amendments thereto and the general laws granting lands to railway companies, and that it had acquired the right to the same prior to the adoption of the constitution of 1869-'70 by virtue of its charter and said laws and the construction and completion in part of its line of railway, and that such right could not be taken away by said constitution, if it was so intended, without violating section 10, article 1, of the Constitution of the United States and the 14th amendment to said Constitution. As already

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stated, appellant had organized under the special acts granting and amending its charter and had constructed a very important part of its line—that is, from Harrisburg to Columbus—prior to the adoption of the constitution of 1869. It had, therefore, accepted the grant and expended a very large amount in earning the same before the adoption of the constitution of 1869–'70, and thereupon ac-
183 quired a vested and contract right to said grant which could not be taken away or impaired by the constitution of 1869–'70 without violating the Constitution of the United States.

Fifth.

This court erred in overruling and holding not well taken appellant's sixth assignment of error, which in effect complained of the action of the court below in rendering judgment for the plaintiff and in not rendering judgment for the defendant for the lands sued for, because it was conclusively shown that the defendant was, if for no other reason, entitled to said lands under and by virtue of the act approved July 27th, 1870, entitled "An act supplementary to the act to incorporate the Buffalo Bayou, Brazos & Colorado Railway Company and of the other special acts relating to said company," and under and by virtue of the amendment to section 6, article 10, of the constitution of 1869, adopted by the people in November, 1872, and ratified by the legislature in March, 1873. The adoption, as aforesaid, of the amendment to section 6, article 10, of the constitution of 1869 related back as of the date of the adoption of the constitution of 1869 and removed all constitutional inhibition, if any, of the right to make such grants and gave full force and effect to the provisions of the said act of July 27th, 1870, and prior legislation granting such lands to appellant.

Sixth.

This court erred in overruling and holding not well taken appellant's seventh assignment of error, which in effect complained of the action of the court below in rendering judgment for the plaintiff and in not rendering judgment in favor of the defendant for the lands sued for, because it was conclusively shown that upon the adoption in November, 1872, of the amendment to section 6, article 10, of the constitution of 1869, ratified by the legislature March, 1873, appellant became, if it was not before, entitled to the lands in question under and by virtue of section 11 of the act passed July 27th, 1870, entitled "An act supplementary to the act to incorporate the Buffalo Bayou, Brazos & Colorado Railway Company and of the other special acts relating to said company," which section provided in effect that appellant should be entitled to the same or similar rights and relief granted to or provided for any other railroad company by the legislature and upon the same or similar terms and conditions, so far as such rights or relief should be in
184 their character applicable to appellant or it- line or lines of railroad. In addition to such grants which had been theretofore and were thereafter made by general and special laws, it was

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shown that the same legislature which ratified the amendment to section 6, article 10, of the constitution of 1869, removing the constitutional prohibition of grants to railroad companies, and at the same session, passed acts making such grants to twenty-eight or more other railroad companies. The rights of appellant under and by virtue of the said section of said act were not presented to or considered by the supreme court in the question certified to it in this cause and is not discussed by this court in its opinion herein. Appellant insists that its right- to the land in controversy were precisely such as were conferred upon a great number of other railroad companies by laws passed in 1873, by the legislature which ratified the amendment to section 6, article 10, of the constitution of 1869, and subsequent laws, and that section 11 of said act of July 27th, 1870, fully secured such rights to it.

Seventh.

This court erred in overruling and holding not well taken appellant's eighth assignment of error, which complained of the action of the court below in rendering judgment for the plaintiff and not in rendering judgment for the defendant, because, if defendant was not otherwise entitled thereto, it was entitled to said lands by virtue of the provisions of the act of August 15th, 1876, granting 16 sections of land to all railroad companies for every mile of railroad completed and put in running order. The act incorporating the appellant and other special acts relating to it showed, and other evidence tended to show, that appellant came within the provisions of the said act of August 15th, 1876, and was entitled to all the benefits thereof, and there was no evidence offered to show that appellant was excepted from and was not entitled to the benefits of said law.

Eighth.

This court erred in overruling and holding not well taken
185 appellant's ninth, tenth, eleventh, thirteenth, fifteenth, and seventeenth assignments of error, complaining in effect of the action of the court below in rendering judgment against defendant for the lands sued for, when it was conclusively shown that the defendant had earned and was entitled to 6,380,953 acres of land for the construction of its line of railway from San Antonio westward to El Paso, a distance of 623 miles, for which land the State of Texas wrongfully and arbitrarily refused to issue appellant certificates or patents; and under said assignments appellant also contended in effect that after appellant had accepted the charter granted to it and the obligations imposed thereby and had expended a vast sum of money in the prosecution of the enterprise, and had about completed said entire line from Buffalo bayou to El Paso, the State of Texas wrongfully sought to repeal all laws granting such lands to appellant, and to that end passed an act entitled "An act to repeal all laws granting land or land certificates to any person, firm, corporation, or company for the construction of railroads, canals, and ditches," approved April 22nd, 1882, and other acts

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passed subsequent to 1876, and thereby sought to deprive appellant of its vested right to said land grant and impair the obligation of its contract with the State of Texas entitling it to said land grant, as evidenced by its charter and the several special laws relating to it and the general laws also conferring said land grant.

The plaintiff was not in any event entitled to recover of appellant the land herein sued for while repudiating and impairing its aforesaid contract with appellant, whereby appellant had become entitled to 6,380,953 acres of land, which the State wrongfully with-eld in pursuance of the aforesaid act of April 22nd, 1882, which was passed to impair the obligation of said contract, contrary to the Constitution of the United States. By constructing its road between San Antonio and El Paso, in consideration of the State's offer of aid in land made under the act of August 16th, 1876, and the special acts relating to the appellant and in reliance upon the good faith
186 of the State, the appellant company acquired a contract and vested right to receive 16 sections of land for each mile of road so constructed. The repealing act of 1882 and other acts passed after the acceptance of the State's offer, after the construction, in reliance thereon, of 600 miles of railroad at enormous expense, after the State had secured the benefits of the quasi-public work, the contemplated consideration for the grant is, so far as it affects appellant's rights, unconstitutional, null, and void. It impairs the obligation of the contract, in violation of section 10, article 1, of the Constitution of the United States, and amounts to the deprivation of property without due process of law, in violation section 1 of the 14th amendment to the Constitution of the United States.

Ninth.

This court erred in overruling and holding not well taken appellant's twelfth assignment of error, which in effect complained of the action of the court below in not holding that by reason of the wrongful act of the State in repealing by act of April 22, 1882, the laws granting lands to appellant and other railroad companies, the State was estopped to recover the lands sued for without tendering appellant certificates for the amount of land earned by the appellant, together with the money received by the State from appellant for surveying and patenting the lands in controversy. When the State instituted this suit she subjected herself to the jurisdiction of the court to the same extent as any ordinary litigant, at least so far as concerns any and all legal or equitable defences to her claim. She can obtain equitable relief only when entitled to it upon principles of equity and good conscience. The rights and claims of appellant to the land grant for the construction of its road west of San Antonio, which is not disputed was earned, constituted at least an equitable defence which should be enforced in any event, so far as they afford ground for dismissing the
187 suit of the State or conditioning the relief accorded her upon her doing justice to the appellant or for quieting the company in the possession of the land sued for. Under the undisputed

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facts and circumstances in evidence, appellant was entitled to a decree dismissing the suit on the ground that complainant's demand was unconscionable or a decree with-olding the relief sought, unless the State should perform in good faith her obligation to appellant, or a decree quieting the appellant in possession of the land now sued for on the ground that if not otherwise entitled thereto it was entitled to receive and hold it as a part of the agreed consideration for the construction of its road to El Paso. See appellant's supplemental argument.

Tenth.

This court erred in overruling and holding not well taken appellant's fourteenth assignment of error, which in effect complained of the action of the court below in not holding that the appellant was entitled to 112,640 acres of land sued for, because it was shown that for eleven miles of appellant's road it had never received certificates, although the same had been inspected by Mr. Wm. P. Hardeman, who was appointed by Gov. O. M. Roberts for the purpose on June 25th, 1881, and his report was duly filed on June 29th, 1881 (Transcript, 225, 250–'51). Its road having been actually inspected by the engineer appointed for that purpose and his report having been duly filed before the passage of the repealing act of April 22, 1882, appellant was clearly entitled to the amount of land earned by the construction of said road, to wit, 112,640 acres, and, the State having wrongfully refused to issue patents therefor, appellant should have been allowed, in any event, to retain that much of the land sued for herein.

Eleventh.

This court erred in overruling and holding not well taken appellant's sixteenth assignment of error, which in effect com-
188 plained of the action of the court below in not holding that the governor, who, in obedience to law, appointed an engineer to inspect the road as completed, was not the sole and exclusive judge as to whether the facts entitling appellant to certificates for the land in question existed. The amendment to section 6, article 10, of the constitution of 1869 having been adopted, and the constitutional restriction, if any, upon the granting of such lands having been thereby removed, appellant was entitled to the land in question for the construction of its road, and the fact of such construction having been ascertain- and determined by the governor in the manner provided by law, his finding and decision in regard thereto was final and conclusive as to the time and manner when said work was done and said certificates earned.

Twelfth.

This court erred in overruling and holding not well taken appellant's fifteenth assignment of error, which in effect complained of the action of the court below in rendering judgment against the appellant when it appeared that from the special acts incorporating and relating to appellant and from the laws granting lands to rail-

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road companies under and by virtue of said special acts, and from the decisions of the supreme court of the State and the uniform construction placed upon such laws by the executive department of the Government, a rule of property with respect to such lands had been established and a vested right under such construction of said laws acquired by appellant, which was violated and taken away by the judgment of the court below, and the construction placed upon said laws by said court contrary to the Constitution of the United States and the amendment thereof.

Thirteenth.

This court erred in affirming the judgment of the court below decreeing to the State the lands sued, for when the uncontradicted evidence showed that the construction of the appellant's road west of the Colorado river was commenced in March, 1873, and the entire work of such construction was performed thereafter and after the adoption of the amendment to section 6, article 10, of the constitution of 1869, removing the restriction, if any, upon appellant's right to acquire such lands under its original charter and the several acts amendatory thereof and supplementary thereto, or
189 under the general laws of the State. (Railway *vs.* Gross, 47 Tex., 428.)

Fourteenth.

This court erred in affirming the judgment of the court below decreeing the land sued for to the State of Texas, when the uncontradicted evidence showed that by section 11 of the act passed July 27th, 1870, supplementary to the act incorporating appellant, it was provided that appellant should be entitled to the same or similar rights and relief granted to or provided for any other railroad company by the legislature, and when the legislature, at the same session which ratified the amendment to section 6, article 10, of the constitution of 1869, passed a great number of special laws conferring upon other railroad companies precisely the same land grants as that now in controversy, and when the entire road, for the construction of which the lands in question were granted, was constructed by appellant after the passage of such acts and after said amendment to the constitution.

Fifteenth.

This court erred in affirming the judgment of the court below decreeing to the State the lands sued for, when the uncontradicted evidence showed that for the construction of that part of appellant's line of railroad between San Antonio and El Paso, consisting of upwards of 623 miles, the State of Texas wrongfully withheld from appellant the lands earned by it by the construction of said road, aggregating 6,380,953 acres, under and by reason of the act of April 22nd, 1882, repealing all laws granting lands to railroad companies, which act impaired appellant's contract with the State, and was passed in violation of section 10, article 1, of the Constitution of the United States,

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and deprived appellant of property without due process of law, in violation of section 1 of the 14th amendment to said Constitution.

Sixteenth.

This court erred in affirming the judgment of the court below decreeing the land sued for to the State of Texas, while allowing the State, under the act of April 22nd, 1882, passed in violation of the Constitution of the United States, to withhold from appellant 6,380,953 acres of land, which the undisputed facts in evidence showed appellant earned by the construction of that part of its line of
190 railway between San Antonio and El Paso, consisting of more than 623 miles, when the court below should have dismissed the State's suit on the ground that under such circumstances the State's demand was unconscionable, or should have withheld the relief sought until the State performed in good faith her obligations to appellant with respect to such lands, or should have rendered a decree quieting the appellant in the possession of the land now sued for on the ground that if not otherwise entitled thereto appellant is entitled to receive and hold it as a part of the agreed consideration for the construction of its said road between San Antonio and El Paso.

Seventeenth.

This court erred in holding in effect that the constitution of 1869, and especially section 6, article 10, thereof, deprived appellant of the 16 sections of land for each mile of road constructed by it, granted by the act incorporating it and the several acts amendatory thereof, and the general laws of the State on the subject theretofore in force, which land, including all that now in controversy, it is conceded by the supreme court, appellant would have been entitled to but for the adoption of said constitution, because appellant says that the said constitution of 1869, so construed, impairs the obligation of appellant's contract, whereby it was to receive said land grant, and destroyed appellant's vested right to said land grant, contrary to section 10, article 1, of the Constitution of the United States, and section 1 of the 14th amendment thereof.

Eighteenth.

This court erred in holding that appellant did not succeed to all and singular the rights of the Buffalo Bayou, Brazos & Colorado Railroad Company, and misapprehended and misconstrued the opinion of the supreme court upon that point delivered in answer to the questions in this case certified to that court. All the rights, franchises, and privileges conferred upon the Buffalo Bayou, Brazos & Colorado Railway Company passed and belonged to appellant. (Rev. Stat. 1895, art. 4549; H. & T. C. R. R. Co. *vs.* Shirley, 54 Tex., 125, 138; Acres *vs.* Moyne, 59 Tex., 623; G., C. & S. F. R. Co. *vs.* Newell, 73 Tex., 335.)

Wherefore appellant prays the court to set aside its said judgment herein affirming the judgment of the court below and grant

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it a rehearing; and appellant represents that the Honorable
191 M. M. Crane, attorney general of the State of Texas, who resides and has his office in the city of Austin and county of Travis, Texas, is counsel and attorney of record for appellee, The State of Texas, and appellant prays for service of this motion upon him as the law requires.

Respectfully submitted.

T. D. COBBS,
J. P. BLAIR,
BAKER, BOTTS, BAKER & LOVETT,
Attorneys for Galveston, Harrisburg & San Antonio Railway Company, Appellant.

Endorsed: No. 385. Mo. 1014. Galveston, Harrisburg & San Antonio Railway Co. *vs.* The State of Texas. Motion for rehearing. Filed in the court of civil appeals at San Antonio, Texas, May 13, 1896. H. E. Hildebrand, clerk. With app. No. 1143. Filed in supreme court at Austin, Texas, July 2, 1896. Chas. S. Morse, clerk.

Order of Court on Motion for Rehearing.

WEDNESDAY, *June 3rd, A. D.* 1896.

G., H. & S. A. R'y Co., Appellant, *vs.* STATE OF TEXAS, Appellee. } No. 385. Appeal from Brewster County.

The motion of appellant for a rehearing, filed May 13, 1896, coming on to be heard, and the court having duly considered the same, it is ordered that said motion be, and it is hereby, overruled, and it is further ordered that appellant, The Galveston, Harrisburg & San Antonio Railway Company, and its sureties, E. P. Hill and W. N. Shaw, pay all costs of this motion.

Petition for Writ of Error.

In the Supreme Court of Texas.

THE GALVESTON, HARRISBURG & SAN ANTONIO RAILWAY COMPANY
192 *vs.*
THE STATE OF TEXAS.

Petition for writ of error to the court of civil appeals for the fourth supreme judicial district.

Your petitioner, The Galveston, Harrisburg & San Antonio Railway Company, applying for a writ of error to the court of civil appeals for the fourth supreme judicial district of Texas for the removal of the above-entitled cause from said court into this honorable court, respectfully represents that this, the said cause, was instituted in the district court of Brewster county, Texas, by The State of Texas,

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as plaintiff, against your petitioner, as defendant, for the recovery of 1,383 sections, tracts, or parcels of land containing, in the aggregate, $879{,}078\frac{1}{2}{}_{0}$ acres, situated in the counties of Jeff Davis, Presidio, Brewster, Kimble, San Saba, Val Verde, Crockett, McCulloch, Pecos, Buchel, Reeves, Schleicher, Sutton, and Zavalla counties, and resulted in judgment in the court below on the 13th day of September, 1893, in favor of the plaintiff for all the lands sued for; which judgment, on appeal therefrom by petitioner, was in all things affirmed by the court of civil appeals by a judgment rendered on the 29th day of April, 1896. Motion for rehearing, which was filed by petitioner in said court on May 13th, 1896, was overruled by said court on the 3rd day of June, 1896; and petitioner says that in the judgment and proceedings in said cause the said court of civil appeals committed error in its rulings upon questions of law, the determination of which were necessary to the decision of said cause in the court of civil appeals and which are relied upon by petitioner as grounds for its application for writ of error herein as follows, to wit:

First. The said court of civil appeals erred in overruling and holding not well taken appellant's first and second assignments of error, each of which complain, in effect, of the action and ruling of the court below in refusing appellant's application to remove this cause into the circuit court of the United States and in proceeding with this cause after the presentation of the petition and bond for such removal.

Statement.

Plaintiff's petition alleged (Trans., 67) that the Buffalo Bayou, Brazos & Colorado Railway Company was chartered by the special act of February 11th, 1850 (Laws 1849–'50, page 194). It also alleged "that by the special act of the legislature of the State
193 of Texas approved July 27th, 1870, the name of the Buffalo Bayou, Brazos & Colorado Railway Company was changed to The Galveston, Harrisburg & San Antonio Railway Company, the defendant," etc. (Trans., 68). It also alleged (Trans., 68) that at the time the aforesaid act of July 27th, 1870, was passed "the constitution of 1869–'70 forbade the legislature from authorizing or granting lands to railway companies for the construction of their roads, though no land was granted by said act," and also alleged (Trans., 75) that the issuance of the certificates described in plaintiff's petition was "in violation of the constitution and laws of this State," etc. It sufficiently appeared from plaintiff's petition and also from the aforesaid act of July 27th, 1870, specially pleaded therein, that part of your petitioner's line of railway extending from Harrisburg to Columbus had been constructed and was in operation prior to the adoption of the constitution of 1869.

Your petitioner in due time presented to the court below its application to remove this cause into the Federal court upon the ground, in effect, that the suit was one arising under the constitution and laws of the United States (Trans., 77–100). It was claimed in effect in the petition for removal, as well as in the original answer filed therewith, that petitioner had proceeded under its charter

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granted by the special act of February 11th, 1850, and the acts amendatory thereof and supplementary thereto to construct and had constructed prior to the adoption of the constitution of 1869 a large and important part of its line of railway—*i. e.*, from Harrisburg to Columbus—and had acquired thereby and under the special acts relating to it and under the general laws referred to by such acts a contract and vested right to sixteen sections of land for each mile of road which it should construct, and that the constitution of 1869, pleaded by plaintiff in its original petition, impaired the obligation of such contract, in violation of section X, article 1, of the Constitution of the United States and deprived petitioner of property without due process of law, in violation of section 1 of the 14th amendment of said Constitution. The application to remove was denied by the court below (Trans, 135); to which ruling petitioner duly excepted. (Trans., 140.)

It appeared from the special acts incorporating and relating to petitioner, as pleaded in the State's original petition, and from the general law of January 30th, 1854, referred to in and made a
194 part of such special acts, that petitioner was entitled to sixteen sections of land for each mile of road it should construct unless the grant thus made had been in some manner withdrawn, and the constitution of 1869 was specially set up by the State in its petition as a reason why petitioner was not entitled to the grant for the construction of its line to San Antonio. By reference to the special laws mentioned in plaintiff's petition it appears that petitioner was incorporated by the special act of February 11th, 1850; that by the act of January 29th, 1853, it was granted eight sections of land for each mile of its road; that by an act of February 4th, 1854, it was granted all the rights, privileges, and benefits accruing from any general law or laws that had been or might thereafter be passed by the State to encourage the construction of railroads in the same manner and to the same extent as if the gauge of its road was the same as then fixed or might be thereafter fixed upon by the State, and this had the effect of conferring upon the company the land grant provided by the general law of January 30th, 1854, which was then in force. It also appeared from another special act of February 4th, 1854, that the route of the company's road was restricted to an extension of their existing road to Austin, etc.; and it appeared in the special act of July 27th, 1870, pleaded in plaintiff's petition, that such restriction with respect to route is removed by that act. It further appears from the act of July 27th, 1870, pleaded by the plaintiff, that petitioner had constructed its road from Harrisburg to the Colorado river, which necessarily involved a very large expenditure of money prior to the constitution of 1869.

Authorities.

Laws 1849–'50, page 194.
Special Laws 1853, page 3.
Laws 1853–'4, page 11.
Act Feb. 4, 1854, Laws 1854, page —.

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Act Feb. 4th, 1854, Laws 1854, page —.
Act July 27th, 1870, Special Laws 1870, page 45.
Constitution 1869, sec. 6, art. 10.
Railroad Co. *v.* Kuechler, 36 Tex., 382.
Davis *vs.* Gray, 16 Wall., 203.
United States *vs.* D. & R. G. Co., 150 U. S., 1.
195 Fletcher *vs.* Peck, 6 Cranch, 136.
People *vs.* O'Brien, 111 N. Y., 1.
Act of Congress Aug. 13th, 1888, 25 Statute.
Tennessee *vs.* Union Bank, 152 U. S., 454.

Second.

The court of civil appeals erred in overruling and holding not well taken appellant's third assignment of error, which in effect complained of the action of the court below in overruling and denying and holding not well taken appellant's plea in abatement for lack of parties.

Statement.

The plea (Trans., 101) showed that on June 1st, 1880, appellant executed and delivered to Andrew Pierce and George F. Stone, trustees, a mortgage or deed of trust upon its railroad, corporate rights and franchises, and the lands sued for to secure the bonds of the company issued to the amount of one million dollars; that Andrew Pierce thereafter died, and George F. Stone, under the terms of the mortgage, thereupon became the sole trustee; that said bonds were still outstanding and the mortgage securing the same had been duly recorded in each of the counties where the property was situated, and it was claimed that George F. Stone, as such surviving trustee, was a proper and necessary party as the representative of the holders of said bonds (Trans., 101–105). This plea was overruled and denied by the court below. (Trans., 107–172.)

Authorities.

Rev. Stat. 1895, art. 5252–5254, 1208.
Ship Channel Co. *vs.* Bruly, 45 Tex., 6.
De La Vega *vs.* League, 64 Tex., 205, 212.
Halloway *vs.* McIlhenny, 77 Tex., 657.

Third.

The court of civil appeals erred in overruling and holding not well taken appellant's fourth assignment of error, which complains of the action of the court below in overruling appellant's general demurrer to plaintiff's petition.

Statement.

Plaintiff's petition showed that the certificates therein mentioned were issued by the commissioner of the general land office; that they had been located in the manner provided by law, and that

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patents in most instances, as shown by plaintiff's petition, had been issued to petitioner for the land sued for, whereby it had be-
196 come invested with the legal and complete title to the lands for which patents had been issued, and that it had at least the equitable right and title to the lands surveyed, as shown, but which had not been patented.

Authorities.

United States *vs.* Maxwell Land Grant Co., 121 U. S., 325.
Colorado C. & J. Co. *vs.* United States, 123 U. S., 307.
United States *vs.* California, etc., Land Co., 148 U. S., 31.
United States *vs.* Aredondo, 6 Peters, 691.
Sherman *vs.* Simmons, 109 U. S., 735.
Black *vs.* Commissioners, 99 U. S., 686.

Fourth.

The court of civil appeals erred in overruling and holding not well taken appellant's fifth assignment of error, which in effect complained of the action of the court below in rendering judgment for the plaintiff and in not rendering judgment for appellant for the lands in controversy and in affirming the judgment of the court below, because it was shown by the uncontroverted evidence that appellant was entitled to such lands by virtue of its charter and the amendments thereto and the general laws granting lands to railway companies, and that it had acquired the right to the same prior to the adoption of the constitution of 1869–'70 by virtue of its charter and said laws and the construction and completion in part of its line of railway, and that such right could not be taken away by said constitution without violating section 10, article 1, of the Constitution of the United States and the 14th amendment of said Constitution.

Statement.

See fourteenth and seventeenth ground- of motion for rehearing. The Buffalo Bayou, Brazos & Colorado Railway Company, as we have seen, was incorporated by special act of the legislature approved February 11th, 1850 (Gen. Laws 1849–'50, page 194). An act approved Feb. 4th, 1854, conferred upon the company "all the rights, privileges, and benefits accruing from any general law or laws that have or may hereafter be passed by this State to encourage the construction of railroads in the same manner and to the same extent as if the gauge of said road was the same now fixed or which may be hereafter fixed upon by this State" (chap. 45, page 69, Special Laws 1854). The company's road commenced on Buffalo bayou and extended thence westwardly, and it therefore became, upon the passage of this special act, entitled to the land grant provided by the general law of January 30th, 1854. By another special act approved Feb. 4th, 1854 (chap. 46, page 70, Special Laws 1854), it was provided that the company should not be entitled to the benefits thus conferred for any portion of its road which should

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not be completed and ready for use within ten years after
197 the passage of the act last named. By an act approved Jan. 11th, 1862, it was provided that the time of the continuance of the war between the Confederate States and the United States should not be computed against any internal improvement company in reckoning the period allowed them in their charters by any law, general or special, for the completion of any work contracted by them to do (Gen. Laws 1862, chap. 62, page 43). By another act of the same date, entitled "An act for the relief of railroad companies," it was provided that the failure of any chartered railroad company to complete any section or fraction of section of its road, as required by existing laws, should not operate as a forfeiture of its charter or of the lands to which it would be entitled under the provision of the act to encourage the construction of railroads by donation of land, approved January 30th, 1854, and the several acts supplementary thereto, provided it should complete such section or fraction of section as would entitle it to donations of land under existing laws within two years after the close of the war (Gen. Laws 1862, chap. 69, page 46). The effect of these acts was to extend the general law of January 30th, 1854, which would have otherwise expired in 1864, until the 20th day of August, 1868, two years after the close of the war. On November 13th, 1866, the legislature passed an act entitled "An act for the benefit of railroad companies," the effect of which was to extend the general act of January 30th, 1854, granting lands to railroad companies, for ten years after November 13th, 1866. From the preamble to the special act of July 27th, 1870, relating to petitioner, it appears that the Buffalo Bayou, Brazos & Colorado Railway Company had, prior to the adoption of the constitution of 1869–'70, constructed its road from Harrisburg to the Colorado river, and that all its railroad, together with its corporate rights and franchises, had been sold out under executions issued on judgments against it and under the provisions of a mortgage or deed of trust made by it.

Authorities.

Davis *vs.* Gray, 16 Wall., 203, 228.
State *vs.* Minnesota & C. R. Co., 36 Minn., 259.
Railroad Co. *vs.* Ga., 98 U. S., 365.
H. & T. C. R. Co. *vs.* Shirley, 54 Tex., 125, 138.
198 Acres *vs.* Moyne, 59 Tex., 623.
G., C. & S. F. R. Co. *vs.* Newell, 73 Tex., 335, 338.
Orr *vs.* Rhine, 45 Tex., 345, 353.
Hanrick *vs.* Hanrick, 54 Tex., 108.
Neil *vs.* Keese, 5 Tex., 22.
Laughter *vs.* Sula, 59 Tex., 183.
The Distilled Spirits, 11 Wall., 356–364.
Henderson's Tobacco, 11 Wall., 652, 658.
Davis *vs.* Fairburn, 3 How., 636, 644.
United States *vs.* Walker, 22 How., 399, 311.
McCool *vs.* Smith, 1 Black, 459, 470.

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Laredo *vs.* Martin, 52 Tex., 561.
Ellis *vs.* Botts, 26 Tex., 707.
Scoby *vs.* Sweatt, 28 Tex., 728.
State *vs.* Stoll, 17 Wall., 425, 436.
Ex parte Crow Dog, 109 U. S., 570.
New Jersey *vs.* Yarde, 95 U. S., 104, 117.
Sutherland on Statutory Construction, sec. 157, 158.
Gowen *vs.* Harley, 12 U. S. App., 574, 584.
Sutherland on Statutory Construction, sec. 137.
Railroad Co. *vs.* Kuechler, 36 Tex., 383.
Railroad Co. *vs.* Gross, 47 Tex., 437.
Davis *vs.* Grey, 16 Wall., 203.
G., H. & S. A. R'y Co. *vs.* State, 81 Tex., 595.
Salt Co. *vs.* East Saginaw, 13 Wall., 373.
U. S. *vs.* Denver & Rio Grande R'y Co., 150 U. S., 1, 8, 14.
Fletcher *vs.* Peck, 6 Cranch, pp. 136, 137.
Hall *vs.* Wisconsin, 103 U. S., 5.
Bishop on Contracts (ed. 1887), sec. 329.
People *vs.* O'Brien, 18 N. E. Rep., pp. 702, *ffg.*
Wallace *vs.* Loomis, 97 U. S., 146, 154.
Southern Pacific Co. *vs.* Orton, 6 Sawyer (C. C., 157; S. C., 32 Fed. Rep., 457).
Cherew & Salisbury R. R. Co. *vs.* Commissioners of Anson, 88 N. C., 519 (17 Am. & Eng. R. R. Cas., p. 434).

Fifth.

The said court of civil appeals erred in overruling and holding not well taken appellant's sixth assignment of error, which
199 in effect complained of the court below in rendering judgment for the plaintiff and in not rendering judgment for the defendant, because it was conclusively shown that the defendant was, if for no other reason, entitled to said land under and by virtue of the said special act of July 27th, 1870, and of the amendment to section 6, article 10, of the Constitution of 1869, adopted by the people in November, 1872, and ratified by the legislature in March, 1873, because the adoption of the constitutional amendment referred to related back as of the date of the constitution of 1869 and removed all constitutional inhibition, if any, of the right to make such grants and gave full force and effect to the act of July 27th, 1870, and prior legislation granting such lands to petitioner. The form of the amendment, and especially the second proviso thereof, evidences a recognition of the validity of intermediate legislation and an intention to give effect to this proviso as of the date of the adoption of the constitution of 1869.

Statement.

See fifth ground of motion for rehearing. The constitution of 1869 took effect on the 30th day of March, 1870. The amendment of section 6, article 10, was proposed by the legislature by a resolu-

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tion passed May 17th, 1871 (Gen. Laws 1871, page 160). It was adopted by a vote of the people on the 5th, 6th, 7th, and 8th days of November, 1872. It was ratified by the legislature by a resolution passed on the 19th day of March, 1873 (Gen. Laws 1873, page 224, 225) and became effective on that date.

Sixth.

The said court of civil appeals erred in overruling and holding not well taken petitioner's seventh assignment of error, which in effect complained of the action of the court below in rendering judgment for the plaintiff for the lands sued for, because it was conclusively shown that upon the adoption of the amendment to section 6, article 10, of the constitution of 1869 petitioner became, if it was not before, entitled to the lands in question under and by virtue of section 11 of the act passed July 27th, 1870, and when the uncontroverted evidence showed that the construction of petitioner's road, for which the certificates described in plaintiff's petition were issued, and the entire work of such construction was performed after the adoption of said constitutional amendment.

Statement.

See sixth and thirteenth grounds of the motion for rehearing. Section 11 of the special act passed July 27th, 1870, relating to petitioner reads as follows:

"SECTION 11. That said new company shall be entitled to the same or similar rights and relief, except State aid in bonds, or endorsement of, or guaranty of interest on bonds, granted to or provided for any other railroad company by the legislature, and upon the same or similar terms and conditions, so far as such rights or relief are, in their character, applicable to said new company or its line or lines of railroad." (Special Laws 1870, chap. 28, pages 45–49.)

The evidence showed that the construction of petitioner's road for which the certificates in question were issued began at Columbus westwardly in March, 1873, and was completed to the West Navidad about June 1st, 1874; that the road was open for business on the following dates: To Weimar November 16th, 1873; Schulenburg, December 1st, 1873; Flatonia, April 16th, 1874; Waelder, July 1st, 1874; Luling, Sept. 1st, 1874; Kingsbury, July 23rd, 1875; Seguin, Aug. 10th, 1875; Guadalupe river, August 10th, 1876 (Trans., 248, 249), and the court of civil appeals so found the facts to be. (See page 8, findings of fact filed by the court of civil appeals.)

The legislature which ratified the amendment to section 6, article 10, of the constitution of 1873 granted sixteen sections of land to the following-named railroad companies for each mile of road they should construct:

Austin & Pacific Short Line Railroad Company.

Atlantic & Pacific railroad, to aid in construction of.

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Beaumont, Corsicana & Fort Worth Railroad Company.
Carthage Branch Railway Company.
Columbus, Austin & Parker County Railroad Company.
Corpus Christi & Rio Grande railway.
Dallas, Palestine & Southeast Texas railroad.
Dallas & Wichita Railroad Company, charter amended.
Fort Worth & Denver City Railway Company.
East Line & Red River railroad, charter amended.
Fort Worth, Cleburne & Waco Railway Company.
Galveston & Eastern Texas Railway Company, charter amended.
Gulf, Western Texas & Pacific railway, to aid in construction of.
Gulf, Colorado & Santa Fe Railway Company.
Hempstead Eastern & Western Trunk Railway Company.
Lavaca Tap Railway Company.
Ledbetter & La Grange Railway Company.
Orange, Jasper & Shelby Railroad Company.
Pacific & Great Eastern Railway Company.
Paris, Greenville & Cleburne Railway Company.
Rockport, Fulton, Laredo & Mexican Pacific Railroad Company, amended.
Sherman, Tyler & Anderson Railway Company.
Sherman, Wichita & Panhandle railway.
St. Louis & Mexican Gulf Railroad Company.
Texas & Pacific Railway Company, defining rights of.
Texas Timber & Prairie Railroad Company, charter amended.
201 Tyler Tap Railroad Company, amending.
Western Narrow Gauge Railway Company, supplement.

Authorities.

Railroad Co. *vs.* Gross, 47 Tex., 428, 436.
Cooley's Constitution- Limitation-, 114–117.
Brig Aurora, 7 Cranch, 32.
Peck *vs.* Weddell, 17 Ohio State, 271.

Seventh.

The said court of civil appeals erred in overruling and holding not well taken appellant's eighth assignment of error, which complained of the action of the court below in rendering judgment for the plaintiff, because if petitioner was not otherwise entitled thereto it was entitled to said lands by virtue of a provision of the act of August 15th, 1876, granting sixteen sections of land to all railroad companies for every mile of railroad completed and put in running order.

Authorities.

General Laws 1876, page 153.
G., H. & S. A. R'y Co. *vs.* State, 81 Tex., 593.

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Eighth.

The said court of civil appeals erred in overruling and holding not well taken appellant's ninth, tenth, eleventh, thirteenth, fifteenth, and seventeenth assignments of error, complaining in effect of the action of the court below in rendering judgment against defendant for the lands sued for, when it was conclusively shown that petitioner had earned and was entitled to 6,380,953 acres of land for the construction of its line of railway from San Antonio to El Paso, a distance of 623 miles, for which land the State of Texas wrongfully and arbitrarily refused to issue certificates or patents, and had by the act of April 22, 1882, attempted to repeal all laws granting lands to petitioner, as well as other railway companies, and under which petitioner had constructed its road and earned said lands, and had thereby sought to deprive petitioner of its vested right to said land and impair the obligation of its contract right thereto, contrary to section 10, article 1, of the Constitution of the United States and to section 1 of the 14th amendment of the Constitution of the United States, and in holding that petitioner's rights to said 6,380,953 acres of land so earned by the construction of its road west of San Antonio subsequent to the act of August 15th, 1876, and the conduct of the State in reference thereto was not sufficient and valid as an equitable defense to the demand of the State in this action, and as a reason why upon principles of equity and good conscience the State should not receive the relief sought in this action.

Statement.

See the eighth ground of petitioner's motion for rehearing. The court of civil appeals found as a fact that " construction west of San Antonio began in May, 1881. The first grading at Rio Grande river near El Paso was done on March 28th, 1881. The construction of the road was finished from El Paso eastward December 27th, 1882. The road was open for business west from San Antonio
202 and El Paso at La Costa, 25 miles, October, 1881 ; at Hondo, 50 miles, 1881 ; at Sabinal, 71 miles, October 24th, 1881 ; at Uvalde, 93 miles, Nov. 21st, 1881 ; at Eagle Pass junction, 132 miles, March 6th, 1882; at Del Rio, 170 miles, June 23rd, 1882. Construction west from San Antonio and east from El Paso met in January, 1883." (See findings of fact filed by court of civil appeals, page 8.) The State refused to issue and grant any certificates to petitioner for any part of the road constructed between San Antonio and El Paso, a distance of 623.14 miles. (See findings of fact in court of civil appeals, page 8.)

Ninth.

The court of civil appeals erred in overruling and holding not well taken petitioner's twelfth assignment of error, which in effect complained of the action of the court below in not holding that by reason of the wrongful act of the State in repealing, by the act of April 22, 1882, the laws granting lands to appellant and other rail-

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ad companies the State was estopped to recover the lands sued r without tendering appellant certificates for the amount of the nd earned by the construction west of San Antonio, together with e money received by the State for surveying and patenting the nds in controversy and for taxes thereon.

Statement.

It was shown that petitioner had paid all taxes on the lands ac-uing after their location and all fees for locating and surveying e same, as well as the same number of alternate sections for the blic free schools and all fees to the commissioner of the general nd office in reference thereto and all sums of money necessary r its protection and in the way of betterments and for preservation the same. (See findings of fact filed by the court of civil appeals, ge 2.)

Tenth.

The court of civil appeals erred in overruling and holding not ell taken appellant's fourth assignment of error, which in effect mplained of the action of the court below in not holding that pellant was entitled to 112,640 acres of the land sued for, because was shown that for eleven miles of petitioner's road it had never ceived certificates, although the same had been inspected by m. P. Hardeman, who was appointed by Governor Roberts for at purpose on June 25th, 1881, and duly filed his report on June th, 1881.

Statement.

See report of Wm. P. Hardeman, who was appointed by Governor berts to make the inspection. (Trans., 252–255.)

Eleventh.

The said court of civil appeals erred in overruling and holding t well taken appellant's sixteenth assignment of error, which in fect complained of the action of the court below in not holding at the governor, who, in obedience to the law, appointed an engi-neer to inspect the road as completed, was not the sole and 3 exclusive judge as to whether the facts entitling petitioner to certificates to the land in question existed, and that his nclusion was final.

Statement.

Of course, the road was inspected by an engineer appointed by the vernor as provided by law before the certificates described in aintiff's petition *was* issued.

Twelfth.

The said court of civil appeals erred in overruling and holding t well taken appellant's fifteenth assignment of error, which in fect complained of the action of the court below in rendering

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judgment against petitioner when it appeared that from the special acts incorporating and relating to petitioner and from other laws granting lands to railroad companies and from the decisions of the supreme court of the State and the uniform construction placed upon such laws by the executive department of the Government a rule of property with respect to such lands had been established and a vested right under such construction of said laws had been acquired by petitioner, which was taken away by the judgment of the court below and the construction placed upon such laws by said court contrary to the Constitution of the United States and the amendments thereto.

Statement.

See twelfth ground of petitioner's motion for rehearing.

Thirteenth.

The said court of civil appeals erred in concluding and holding as matter of law that the petitioner did not succeed to all the rights of the Buffalo Bayou, Brazos & Colorado Railway Company, and also misapprehended and misconstrued the opinion of this court upon that point delivered in answer to the questions in this case certified to this court.

Statement.

See last paragraph of the conclusions of law filed by the court of civil appeals.

Wherefore petitioner prays upon each and all of the grounds and for each and all of the reasons hereinbefore stated for the issuance of a writ of error in this case to said court of civil appeals as provided by law.

J. P. BLAIR,
T. D. COBBS,
BAKER, BOTTS, BAKER & LOVETT,
Attorneys for Galveston, Harrisburg & San Antonio Railway Company, Petitioner.

CLERK'S OFFICE, SUPREME COURT.

I, Chas. S. Morse, clerk of the supreme court of Texas,
204 hereby certify that the foregoing thirteen pages contain a true and correct copy of the original petition for writ of error No. 1143, G., H. & S. A. R'y Co. *vs.* The State of Texas, filed in this court July 2nd, 1896, and refused by this court May 6th, 1897, as the same is now on file in my office.

Witness my hand and the seal of said court this the 15th day of May, A. D. 1897.

[SEAL.]

CHAS. S. MORSE, *Clerk.*
By FRED. W. SHELLEY, *Deputy.*

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Endorsed: App. No. 1143. G., H. & S. A. R'y Co. *vs.* The State of Texas. Certified copy of petition for writ of error. Filed in the court of civil appeals at San Antonio, Texas, June 24, 1897. H. E. Hildebrand, clerk.

Judgment of Supreme Court.

In Supreme Court of Texas, Fourth District.

G., H. & S. A. R'y Co. *vs.* State of Texas.

MAY 6, 1897.

This day came on to be heard the application of the G., H. & S. A. R'y Co. for a writ of error to the court of civil appeals for the fourth supreme judicial district, and, the same having been duly considered, it is ordered that said application be refused; that the applicant, The Galveston, Harrisburg & San Antonio Railway Company, and its sureties, E. P. Hill and W. N. Shaw, pay all costs incurred on this application.

I, Charles S. Morse, clerk of the supreme court of Texas, hereby certify that the above is a true and correct copy of the judgment rendered by said court on the application of the G., H. & S. A. R'y Co. for a writ of error.

Witness my hand and the seal of said court this the 22nd day of May, A. D. 1897.

205 CHAS. S. MORSE, *Clerk*,
[SEAL.] By F. T. CONNERLY, *Deputy*.

Endorsed: No. 1143. G., H. & S. A. R'y Co. *vs.* State of Texas. Copy of judgment in supreme court. Application for writ of error refused. Filed in the court of civil appeals at San Antonio, Texas, May 24, 1897. H. E. Hildebrand, clerk.

Bill of Costs in Supreme Court.

Clerk's Office, Supreme Court.

G., H. & S. A. R'y Co. *vs.* State of Texas. No. 1143.

Certified copy bill of costs, supreme court.

Filing application	$ 50
Docketing petition	50
Entering appearances of counsel	50
Filing 7 briefs & arg'ts	2 10
Filing 3 papers	90
Entering judgment on application	1 00
Certified copy of judgment	1 00
Taxing costs of application	50
Certified copy of bill of costs	1 00
Total	$8 00

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I, Charles S. Morse, clerk of the supreme court of Texas, hereby certify that the above copy of the original bill of costs is true and correct.

Witness my hand and the seal of said court, at Austin, this the 22nd day of May, 1897.

CHAS. S. MORSE, *Clerk.*

Endorsed: Application No. 1143. Certified copy bill of costs in supreme court, Austin. G., H. & S. A. R'y Co. *vs.* State
206 of Texas. $8.00. Filed in the court of civil appeals at San Antonio, Texas, May 24, 1897. H. E. Hildebrand, clerk.

Petition for Writ of Error.

In the Court of Civil Appeals, Fourth Supreme Judicial District of Texas.

THE GALVESTON, HARRISBURG & SAN ANTONIO RAILWAY COMPANY *et al.*
vs.
THE STATE OF TEXAS. } No. 385.

To any justice of the Supreme Court of the United States or the chief justice of the court of civil appeals in and for the fourth supreme judicial district of Texas:

Your petitioners, The Galveston, Harrisburg & San Antonio Railway Company, a railroad corporation created under and by virtue of the laws of the State of Texas, and E. P. Hill and W. N. Shaw, both residents of Harris county, Texas, respectfully represent that in the above numbered and entitled cause, then pending therein on appeal from the district court of Brewster county, wherein petitioner The Galveston, Harrisburg & San Antonio Railway Company was the only party appellant and The State of Texas was the only appellee, and petitioners E. P. Hill and W. N. Shaw were the sureties and the only sureties on the appeal bond of appellant, the court of civil appeals in and for the fourth supreme judicial district of the State of Texas, on the 29th day of April, 1896, affirmed a judgment in said cause rendered on the 13th day of September, 1893, by the district court in and for Brewster county, Texas, in favor of The State of Texas, as plaintiff, and against petitioner The Galveston, Harrisburg & San Antonio Railway Company, as defendant in said district court, and said court of civil appeals at the same time rendered judgment against petitioners Hill and Shaw, as well as said railway company, for all costs of suit; that thereafter and in
207 due time petitioner railway company filed in the said court of civil appeals its motion for a rehearing, which was thereafter, to wit, on the third day of June, 1896, by said court overruled and denied; that thereafter and in due time petitioner railway company applied, in due form and as authorized by law, to the supreme court of the State of Texas for a writ of error in said cause to the said court of civil appeals, which application was thereafter, to wit,

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on the 6th day of May, 1897, by said supreme court denied and the writ of error prayed for by petitioner railway company refused; whereupon the said judgment of the said court of civil appeals, which is the highest court of said State in which a decision in said suit could be had, became and is final.

And petitioners say that they are aggrieved by the said judgment and the proceedings in said suit, and that in the said judgment and proceedings had prior thereunto in said cause errors were committed, to the prejudice of petitioners, because, they say, there was in said suit drawn in question the validity of a statute of or an authority exercised under the United States and the decision in such suit was against their validity, and there was drawn in question the validity of a statute or constitution of or an authority exercised under a State, on the ground of their being repugnant to the Constitution or laws of the United States, and the decision in said suit was in favor of their validity, and that titles, rights, privileges, and immunities were in said suit claimed by petitioners under the Constitution and statutes of and commissions held and an authority exercised under the United States and the decision in said suit was against the titles, rights, privileges, and immunities specially set up and claimed therein by petitioners under such Constitution, statutes, commissions, and authority, as will hereinafter more fully appear.

Your petitioners say that this suit was instituted in the district court of Brewster county, Texas, by The State of Texas, as plaintiff, against The Galveston, Harrisburg & San Antonio Railway Company, petitioner, as defendant, for the recovery of thirteen hundred and eighty-three sections, tracts, or parcels of land, containing in the aggregate, say, $879{,}078\frac{1}{2}$ acres, situated in the counties of Jeff Davis, Presidio, Brewster, Kimble, San Saba, Val Verde, Crockett, McCulloch, Pecos, Buchel, Reeves, Schleicher, Sutton, and Zavalla,

208 which had been theretofore granted to petitioner railway company by the State of Texas out of the unappropriated public domain of said State under laws of said State, hereinafter referred to, to aid and induce said railway company to construct the lines of railway which it was authorized by its charter and said laws to construct; that the ground upon which the State of Texas in said suit sought to recover said lands was, in effect, that at the time the road for which they were granted was constructed by petitioner railway company and at the time the certificates for said lands were issued and located and said lands were acquired and patents for a large part thereof were issued the laws of said State granting said lands to said railway company had been, in effect, repealed by the constitution of 1869, and that there was then no valid law of the State making or authorizing such grant.

Petitioners further represent that petitioner railway company was originally incorporated under the name of the "Buffalo Bayou, Brazos & Colorado Railway Company" by an act of the legislature of the State of Texas entitled "An act to incorporate the Buffalo Bayou, Brazos & Colorado Railroad Company," approved February 11th, 1850, with authority to locate, construct, own, and maintain

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a railway commencing at a suitable point on Buffalo bayou, between Lynchburg and Houston, in the county of Harris, and thence running by such course and to such point at or near the Brazos river, between the towns of Richmond and Washington, inclusive, as said company should deem most suitable, with the privilege of making, owning, and maintaining such branches of said railway as it might deem expedient (Gen. Laws 1850, page- 194–198); that said company was thereafter organized in pursuance of said act of incorporation, and irregularities in its incorporation were cured by another act of the legislature of the State of Texas approved September 4th, 1850, and its organization was thereby validated (Gen. Laws 1850, page- 13, 14); that by another act of the legislature of the State of Texas entitled "An act to amend the act to incorporate the Buffalo Bayou, Brazos & Colorado Railway Company," approved January 29th, 1853, said company was "invested with the right of locating, constructing, owning, and maintaining a railway commencing at a suitable point on Buffalo bayou, in the county of Harris, and thence running by such course and to such point or points at or near the Brazos and Colorado rivers or across the same as said company may deem advisable, with the privilege of making,
owning, and maintaining such branches to said road as
209 they may deem expedient," and said company was also, by said act, granted eight sections of land of six hundred and forty acres each for every mile of railway actually completed and ready for use, and provisions were made by said act for the inspection of the road as the same should be completed by the State engineer or a commissioner to be appointed by the governor and for the issuance of certificates for said lands upon the report from time to time made or to be made by such engineer (Special Laws 1853, page- 3–5); that by a general law passed by the legislature of the State of Texas entitled "An act to encourage the construction of railroads in Texas by donations of land," approved January 30th, 1854, there was granted to every railroad company chartered by the legislature of the State of Texas theretofore or thereafter constructing within the limits of Texas a section of twenty-five miles or more of railroad sixteen sections of land for every mile of road so constructed and put in running order, and provisions were made in said act for the survey and location of the lands thus granted (Gen. Laws 1854, page- 11–15); that by another special act of the legislature of the State of Texas approved February 4th, 1854 (Special Laws 1854, page 69), entitled "An act to amend an act incorporating the Buffalo Bayou, Brazos & Colorado Railroad Company," approved February eleventh, eighteen fifty, it was provided

"That the Buffalo Bayou, Brazos & Colorado Railroad Company shall be entitled to all the rights, privileges and benefits accruing from any general law or laws that have or may hereafter be passed by this State to encourage the constructing of railroads in the same manner and to the same extent as if the gauge of said road was the same now fixed, or which may be hereafter fixed upon by this State."

Whereby petitioners say that all the benefits of the general act of

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January 30th, 1854, above referred to were expressly conferred upon petitioner railway company, and there was by said general act of January 30th, 1854, and the special act of February 4th, 1854, granted to petitioner railway company by the State of Texas sixteen sections of land for every mile of road that it should construct; that by another special act of the legislature of the State of Texas, also approved February 4th, 1854, entitled "An act supplementary to an act to amend an act to incorporate the Buffalo Bayou, Brazos & Colorado Railroad Company passed at the present session of the legislature," it was provided that if said company should avail itself of the act to which said act was a supplement or accept any donation of land from the State,
it should not be entitled to receive such donation under the
210 provisions of that law or any law that had theretofore been
passed for its benefit for any portion of its road which should not be completed and ready for use within ten years from and after the passage of that act; and it was also provided that the company should restrict itself to an extension of its existing road to Austin, in the county of Travis, crossing the Brazos river at a point between the town of Richmond, in Fort Bend county, and Hidalgo Falls, in Washington county, with the right of extending its road from Austin to and connecting with any road running north of Austin toward the Pacific ocean, the connection to be made between the 96th and 98th parallel of longitude; and it was also provided that said company should have no right to build branches from its main line (Special Laws 1854, page 70); that by an act approved January 11th, 1862, entitled "An act for the relief of railroad companies" (Gen. Laws 1862, pages 46, 47), it was provided in effect that the failure of any railroad company in this State to complete any section or fraction of a section of its road, as required by then existing laws, should not operate as a forfeiture of its charter or of the lands to which it would be entitled under the provisions of an act entitled "An act to encourage the construction of railroads in Texas by donation of lands, approved January 30th, 1854," and the several acts supplementary thereto, provided such company should complete such section or fraction of a section as would entitle it to donations of land under then existing laws within two years after the close of the then prevailing war between the Confederate States and the United States; and by another act also approved January 11th, 1862 (Gen. Laws 1862, pages 43, 44), entitled "An act for the relief of companies incorporated for purposes of internal improvement by allowing them further time for performance on account of the pending war," it was provided in effect that the time of the continuance of the prevailing war between the Confederate States and the United States should not be computed against any internal improvement company in reckoning the period allowed them in their charters by any law, general or special, for the completion of any work contracted by them to do; that by a general act entitled "An act for the benefit of railroad companies," approved November 13th, 1866, it was, among other things, provided that "the grant
of sixteen sections of land to the mile to railroad companies
211 heretofore or hereafter constructing railroads in Texas shall

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be extended under the same restrictions and limitations heretofore provided by law for ten years after the passage of this act." (Gen. Laws 1866, page 212.)

Petitioners further represent that petitioner railway company, proceeding under its charter and the various acts of the legislature of the State of Texas above referred to, commenced, in due time after its incorporation, in 1850, the construction of its line of railway at Harrisburg, on Buffalo bayou, in Harris county, Texas, and had completed and put the same in running order in due time and as required by its charter and the laws of Texas; thence to Alleyton, in Colorado county, a distance of 79.7 miles, prior to July 1st, 1868, and had other parts of its line in process of construction; that the constitution of Texas adopted in 1869 and known as the "constitution of 1869" took effect on the date of its acceptance by Congress, which was March 30th, 1870, as decided in Grigsby *vs.* Peak, 57 Tex., 142, or on the date of its adoption, which was December 3rd, 1869, as subsequently decided in Peak *vs.* Swindell, 68 Tex., 242; but at all events petitioner company had completed and put in operation more than seventy-nine miles of its line of road and had under construction the remainder prior to the adoption of that constitution. Section 6, article X, of the constitution of 1869 reads as follows:

"The legislature shall not hereafter grant lands to any person or persons, nor shall any certificates for land be sold at the land office except to actual settlers upon the same, and in lots not exceeding one hundred and sixty acres."

That on the 27th day of July, 1870, the legislature of the State of Texas passed an act entitled "An act supplementary to the act to incorporate the Buffalo Bayou, Brazos & Colorado Railway Company and of the other special acts relating to said company" (Special Laws 1870, page- 45–49), whereby the name of petitioner railway company was changed to the "Galveston, Harrisburg & San Antonio Railway Company;" that said act also authorized petitioner railway company to consolidate with its existing railroad the bridge built by the Brazos Iron Bridge Company over the Brazos river at Richmond and the five miles of railroad, more or less, from the town of Alleyton to the town of Columbus, built under the charter granted to the Columbus Tap Railroad Company, including the bridge over the Colorado river at Columbus, and to extend
212 its existing line of railroad from Columbus, in Colorado county, to San Antonio, in the county of Bexar, within four years from the passage of the act, and thence to a terminus on the Rio Grande river by such route as the directors should deem most feasible, with a branch from a most suitable point to New Braunfels, in Comal county, or to connect with any line of railroad that might be constructed from San Antonio to the Rio Grande south of the latitude of the city of Austin and the Colorado river instead of building its own line beyond the point of said connection; and it was also authorized to connect with any line of railroad that might be constructed or under construction and designed to form a part

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of any railroad line to the Pacific south of the 35th parallel of latitude. By section 8 of said act it was provided as follows:

"SEC. 8. That in case it shall be made to appear to the governor that there has not been issued upon said railroad the full quantity of sixteen sections of land scrip for every mile of the same that was constructed and put in running order prior to the war of the late rebellion, in accordance with the provisions of the charter and of the general laws of the State, in force at the time, regulating railroads, there shall be issued to said new company said scrip to the amount of any such deficiency, notwithstanding said railroad may not have been constructed and completed at the rate of twenty-five miles each year after the construction of the first twenty-five miles, as provided in the act of January 30th, 1854."

And by section 11 of said act it was provided as follows:

"SEC. 11. That said new company shall be entitled to the same or similar rights and relief, except State aid in bonds, or endorsement of, or guaranty of interest on bonds, granted to or provided for any other railroad company by the legislature, and upon the same or similar terms and conditions, so far as such rights or relief are, in their character, applicable to said new company or its line, or lines of railroad."

And by section 12 of said act it was provided as follows:

"SECTION 12. That nothing in this act shall be so construed as to deprive any party interested, of the right to disprove any assumed fact stated in the preamble; provided, that nothing in this act contained shall be construed as reviving or renewing any land grant to said company for road hereafter to be completed, which it does not possess by existing law."

Other rights were conferred upon said company and burdensome obligations were imposed upon it by said act.

Petitioner railway company proceeded with the extension of its road west of the Colorado river and completed the same to the West Navidad river, a distance of twenty-five miles further, December 19th, 1873, and completed an additional twenty-five miles June 25th, 1874, and an additional twenty-five miles January 16th, 1875; an additional twenty-five miles July 12th, 1875; an additional twenty-five miles October 27th, 1876, and the whole line between the Colorado river and the city of San Antonio was completed and put in operation February
213 13th, 1877, and in due time thereafter the entire line was completed westward to El Paso, Texas, a distance of 623.14 miles. The road was inspected from time to time as sections of twenty-five miles were completed by engineers appointed by the governor, and upon the report of the engineer and approval of the same by the governor the commissioner of the general land office issued to the company certificates for land at the rate of sixteen sections of six hundred and forty acres each per mile of road as authorized by the aforesaid act of January 30th, 1854, and Nov. 13, 1866, for that part of the road between the Colorado river and the city of San Antonio, as certificates had been theretofore issued at the same rate for that part of the road from Harrisburg to the Colorado river,

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but the State refused to issue certificates for that part of the line from San Antonio to El Paso, six hundred and twenty-three and fourteen one-hundredths miles in length, although a part of it had been inspected by the State engineer under the direction of the governor, the refusal to issue certificates for that part of the line being based upon the act entitled "An act to repeal all laws granting lands or land certificates to any person, firm, corporation, or company for the construction of railroads, canals, and ditches," approved April 22nd, 1882. As the certificates were issued to the company the lands were surveyed at large expense and certificates located thereon in the manner provided by law, and patents were also issued for a large part thereof, and the company has ever since paid to the State all taxes *and* which were regularly assessed thereon.

Section 6, article X, of the constitution of 1869, above quoted, was amended by a resolution passed by the legislature May 17th, 1871 (Gen. Laws 1871, page 60), and the amendment was adopted by a vote of the people on the 5th, 6th, 7th, and 8th days of November, 1872, and was ratified by the legislature March 19th, 1873 (Gen. Laws 1873, page- 224, 225), and the amendment became effective on that date and removed the restriction imposed upon the grant of lands in aid of railroads.

Petitioner railway company in said suit in the district court of Brewster county in due time specially set up and claimed and throughout the subsequent proceedings in said cause in appropriate manner specially claimed and contended that by the acceptance of the various acts of the legislature of the State of Texas hereinbefore mentioned and the land grant thereby made to it in consid-
214 eration of the construction of its road, and by promptly entering upon and in due time constructing and completing an important and valuable part of its line at very large expense before the adoption of the constitution of 1869, and by subsequently completing in due time its entire line, petitioner railway company had acquired, under such laws and by the construction of its line, a contract and vested right to the lands granted to it by the State as aforesaid and earned by it, which contract and right could not be impaired or divested by the constitution of Texas adopted in 1869 or any other pretended law or act of said State contrary to the Constitution of the United States, especially article 1, section 10, thereof, which denies to any State power to pass any law impairing the obligation of contracts, and section 1, article XIV, of the amendments thereof, prohibiting any State from depriving any person of property without due process of law (Davis *vs.* Gray, 16 Wall., 203); but petitioners say that the said district court of Brewster county and the said court of civil appeals, by the judgment complained of in said suit, in effect decided and holds that the said constitution of 1869 operated to deprive petitioner railway company of the said lands, thus holding, in effect, that the said constitution of Texas adopted in 1869 impaired the contract and vested right aforesaid and deprived petitioner railway company of its said property without due process of law, contrary to the Constitution of the United States, and especially the provisions thereof hereinbefore referred to;

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and, by way of special illustration of such decision and holding, petitioners say that the supreme court of Texas, in their opinion delivered March 19th, 1896, in this cause, answering questions in this cause certified for their decision by the said court of civil appeals, expressly ruled and decided for the government of said court of civil appeals, in effect, that change of the route of petitioner's road authorized by the aforesaid act of July 27th, 1870, or rather the removal thereby of the restriction with respect to its route imposed by the second act of February 4th, 1854, above mentioned, would have carried with it the right of petitioner railway company, under its charter and the laws aforesaid passed prior to the adoption of the constitution of 1869, to the grant under such charter and laws of sixteen sections of land for each mile of road it should construct and did construct along said line but for the adoption of the
215 constitution of 1869, and that the adoption of said constitution deprived petitioner railway company of such lands (the same being the lands in controversy) to which it was entitled under its charter and the laws passed prior to the adoption of said constitution and which it had earned by the construction at large expense of an important part of its line, the said court thereby holding, in effect, that said constitution impaired petitioner railway company's contract and vested right, but that nevertheless said constitution was valid, and the same decision was made by the said court of civil appeals.

Petitioners further represent that on the 16th day of August, 1876, the legislature of the State of Texas, as it was by sec. 3, art. XIV, and other provisions of the constitution of 1876 expressly authorized to do, passed a general law entitled "An act to encourage the construction of railroads in Texas by donations of land", whereby it was provided that any railroad company theretofore chartered or which should be thereafter organized under the general laws of the State should, upon the completion of a section of ten miles or more of its road, be entitled to receive, and there was thereby granted to every such railroad company from the State, sixteen sections of land for every mile of its road so completed and put in good running order, and said act prescribed the usual formalities for ascertaining compliance on the part of the railroad companies with the provisions of the act, the issuance of certificates, etc. (Gen. Laws 1876, page- 153–154). After the passage of said act petitioner railway company constructed and completed that part of its line between the Guadalupe river and San Antonio, a distance of about thirty-six miles, for which it received certificates and lands from the State; and thereafter and while said act was in force and before the attempt to repeal the same by the act approved April 22nd, 1882, hereinbefore mentioned, said company extended and completed its line of road and put the same in good running order from the city of San Antonio to El Paso, a distance of 623.14 miles, for which the State refused to issue said company certificates or give it lands, because of the passage of the said repealing act of April 22, 1882, the said company having completed its said road prior to the passage of said last-mentioned act. Petitioner railway company, by its

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answer filed in due time and form in this cause in the district court of Brewster county, alleged the construction and com-
216 pletion of its said road westward from San Antonio to the Rio Grande river at El Paso, a distance of 623.14 miles, prior to the passage of said act of April 22, 1882, and that it had thereby earned and was entitled to lands from the State at the rate of sixteen sections of six hundred and forty acres each per mile of completed road, amounting in the aggregate to 6,380,953 acres; that the governor of the State, in obedience to the law, appointed an engineer to inspect a section of said road, who inspected the same for a distance of eleven miles west of San Antonio and reported that the same had been completed and was in good running order, as required by law, but that the governor thereafter refused to appoint any engineer to inspect the rest of said road, and the governor and the commissioner of the general land office had ever since refused to issue petitioner railway company any certificates for the lands to which it was entitled for the construction of said 623.14 miles west of San Antonio, basing their refusal upon the aforesaid act of April 22nd, 1882, which they claimed repealed the laws entitling said company to said land; that by the construction and completion of said 623.14 miles of said railway while said law was in force petitioner railway company had acquired a contract and vested right to said lands which could not be impaired or taken away by the said act of April 22nd, 1882, and that said last-mentioned act, passed after the acceptance of the State's offer, after the construction in reliance thereon at enormous expense of said 623.14 miles of road, after the State had secured the benefits of the quasi-public work, the contemplated consideration of the land grant was, so far as it affected petitioner's right, unconstitutional, null, and void, because it sought to impair the obligation of the contract, in violation of section X, article 1, of the Constitution of the United States, and amounted to a deprivation of property without due process of law, in violation of section 1 of the fourteenth amendment of said Constitution; and petitioner railway company in said answer prayed in effect that the State's suit be dismissed, and also in effect that the court adjudge and decree that the petitioner railway company had earned and was entitled to receive from the State of Texas sixteen sections of land for each of the 623.14 miles of road it had constructed west of San Antonio, and also that it be held and decreed to be entitled to the land described in the State's petition and sued for herein by
217 reason of the construction of said 623.14 miles of road, if not otherwise entitled thereto, claiming that it had also acquired a contract and vested right to said lands under the act of August 16th, 1876, if not otherwise, which contract and right was sought to be impaired and taken away by the aforesaid act of April 22, 1882, contrary to the provision of the Constitution of the United States hereinbefore referred to; but petitioners say that the said district court of Brewster county and the said court of civil appeals by the judgment complained of in said suit in effect decided and held that petitioner railway company was not entitled to said lands, thereby holding and deciding in effect that the aforesaid act of the

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legislature of the State of Texas approved April 22nd, 1882, operated to deprive petitioner railway company of the said lands, thus holding that the said act impaired the contract and vested right and deprived petitioner of its said property without due process of law, contrary to the Constitution of the United States, and especially the provisions thereof hereinbefore referred to.

Petitioners further represent that it appeared from the plaintiff's statement of its own claim as contained in its petition in this suit in the district court in and for Brewster county that this suit was and is one arising under the Constitution and laws of the United States, in this: Plaintiff alleged that petitioner railway company was originally incorporated by the special act of the legislature of Texas approved February 11th, 1850, and hereinbefore referred to; that the act of July 27th, 1870, hereinbefore referred to, was passed by the legislature of the State of Texas, and that at the time said act was passed "the constitution of 1869–'70 forbade the legislature from authorizing or granting lands to railway companies for the construction of their roads, etc.," and also alleged that the issuance of certificates described in plaintiff's petition was in violation of the constitution and laws of the State, etc. Said petition also referred to the special acts approved February 4th, 1854, hereinbefore mentioned. It sufficiently appeared from plaintiff's petition, and also from the aforesaid act of July 27th, 1870, specially pleaded therein, that that part of petitioner railway company's line of railway extended to Alleyton had been constructed and was in operation prior to the constitu-
218 tion of 1869. It also appeared from the special acts incorporating and relating to petitioner, as pleaded by the State, and from the general laws of January 30th, 1854, referred to in and made a part of such special acts, that petitioner railway company was entitled to sixteen sections of land for each mile of road it should construct unless the grant thus made had been in some manner withdrawn, and the constitution of 1869 was specially set up by the State in its petition as a reason why petitioner railway company was not entitled to the grant for the construction of its line to San Antonio. Petitioner railway company in due time presented to the said district court its application to remove this cause into the Federal court upon the ground, in effect, that the suit was one arising under the Constitution and laws of the United States, claiming that petitioner had proceeded, under its charter and the acts relating to it, to construct and had constructed, prior to the adoption of the constitution of 1869, an important part of its line at large expense, and had acquired thereby and under the laws above mentioned a contract and vested right to the land grant in question, and that the constitution of 1869, pleaded and referred to in the State's petition, impaired the obligation of such contract, in violation of section X, article 1, of the Constitution of the United States, and deprived petitioner railway company of property without due process of law, in violation of section 1 of the fourteenth amendment of said Constitution; but said application to remove said cause into the circuit court of the United States was by said

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district court of Brewster county denied and refused, and said district court proceeded with the trial of the same; which action and ruling of said district court was, on appeal therefrom as aforesaid by petitioner railway company, affirmed by the said court of civil appeals by the judgment herein complained of, whereby petitioners say that said court decided against the title, right, privilege, and immunity so specially set up and claimed in said suit by petitioners under the Constitution and statutes of the United States and the commission held and authority exercised under the United States.

Your petitioners refer to the assignment of errors filed herewith and pray that the same be considered for the purposes of this
219 petition as a part hereof, and further pray that a writ of error may be allowed and issued herein to the said court of civil appeals in and for the fourth supreme judicial district of the State of Texas, which now has the record in said suit, for the removal of said cause into the Supreme Court of the United States, to the end that the errors in said judgment and in the proceedings in said cause may be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, and that the transcript of the record, proceedings, and papers in said cause, duly authenticated, may be sent to the said Supreme Court of the United States.

T. D. COBBS,
J. P. BLAIR,
JAS. A. BAKER,
R. S. LOVETT,
Attorneys for the Galveston, Harrisburg & San Antonio Railway Company, E. P. Hill, and W. N. Shaw, Petitioners.

Allowed by—
J. H. JAMES,
Chief Justice of the Court of Civil Appeals in and for the Fourth Supreme Judicial District of Texas.

Endorsed: No. 385. The Galveston, Harrisburg & San Antonio Railway Co. *et al. vs.* The State of Texas. Petition to the United States Supreme Court for writ of error. Filed in the court of civil appeals, at San Antonio, Texas, June 24, 1897. H. E. Hildebrand, clerk.

Writ of Error Bond.

Know all men by these presents that we, The Galveston, Harrisburg & San Antonio Railway Company, E. P. Hill, and W. N. Shaw, as principals, and C. C. Gibbs and D. Sullivan, as sureties, are held and firmly bound unto the State of Texas in the full and just sum of ten thousand dollars, to be paid to the said State of Texas,
220 its successors or assigns; for which payment, well and truly to be made, we bind ourselves and each of us, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 24th day of June, in the year of our Lord one thousand eight hundred and ninety-seven.

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Whereas lately, at a term of the court of civil appeals in and for the fourth supreme judicial district of Texas, in a suit depending in said court between The Galveston, Harrisburg & San Antonio Railway Company, appellant, and The State of Texas, appellee, a judgment was rendered against the said Galveston, Harrisburg & San Antonio Railway Company, appellant, and E. P. Hill and W. N. Shaw, the sureties on its appeal bond, and The Galveston, Harrisburg & San Antonio Railway Company and E. P. Hill and W. N. Shaw have obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said State of Texas, citing and admonishing said State to be and appear at a Supreme Court of the United States, to be holden at Washington, within thirty days from the date hereof:

Now, the condition of the above obligation is such that if the said Galveston, Harrisburg & San Antonio Railway Company, E. P. Hill, and W. N. Shaw shall prosecute their writ of error to effect and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

GALVESTON, HARRISBURG & SAN ANTONIO RAILWAY COMPANY,
E. P. HILL, AND
W. N. SHAW,
By T. D. COBBS AND
J. P. BLAIR, *Their Attorneys of Record.*
C. C. GIBBS.
D. SULLIVAN.

Sealed and delivered in the presence of—
——— ———.
——— ———.

Approved by—
J. H. JAMES,
Chief Justice of the Court of Civil Appeals of the
221 *Fourth Supreme Judicial District of Texas.*

Endorsed: G., H. & S. A. R'y Co. *et al.*, appellants, *vs.* The State of Texas, appellee. Writ of error bond. Filed in the court of civil appeals, at San Antonio, Texas, June 24, 1897. H. E. Hildebrand, clerk.

Duplicate Writ of Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable judges of the court of civil appeals in and for the fourth supreme judicial district of the State of Texas, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of an appeal which is in the said court of civil ap-

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peals in and for the fourth supreme judicial district of Texas, before you or some of you, being the highest court of the said State in which a decision could be had in said suit between The Galveston, Harrisburg & San Antonio Railway Company, appellant, and The State of Texas, appellee, and E. P. Hill and W. N. Shaw, as sureties, on the appeal bond of said appellant, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under any State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of their validity, or wherein a title, right, privilege, or immunity was claimed under the Constitution or a treaty or statute of or commission held or authority exercised under the United States and the decision was against the title, right, privilege, or immunity specially set up or claimed by either party under such Constitution, treaty, statute, commission, or authority, a manifest error has happened, to the great damage of the said The Galveston, Harrisburg & San Antonio Railway Company and E. P. Hill and W. N. Shaw, the sureties on its appeal bond, as by their complaint appears, we, being
222 willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within thirty days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 24th day of June, in the year of our Lord one thousand eight hundred and ninety-seven.

D. H. HART,
Clerk of the Circuit Court of the United States
for the Western District of Texas.
[SEAL.] By —— ——, *Deputy.*

Allowed by—

J. H. JAMES,
Chief Justice of the Court of Civil Appeals
of the Fourth Supreme Judicial District of Texas.

Endorsed: G., H. & S. A. R'y Co. *et al.*, appellants, *vs.* State of Texas, appellee. Duplicate writ of error. Filed in the court of civil appeals, at San Antonio, Texas, June 24, 1897. H. E. Hildebrand, clerk.

BLEED THROUGH

Assignments of Error.

In the Court of Civil Appeals, Fourth Supreme Judicial District of Texas.

THE GALVESTON, HARRISBURG & SAN ANTONIO RAILWAY COMPANY *et al.*
vs.
223 THE STATE OF TEXAS. } No. 385.

Now come plaintiffs in error in the above-entitled cause, The Galveston, Harrisburg & San Antonio Railway Company, E. P. Hill, and W. N. Shaw, and on writ of error from the Supreme Court of the United States say that in the record and proceedings in said cause there is manifest error, which they assign as follows:

First.

The said court of civil appeals erred in overruling and holding not well taken appellant's first and second assignments of error, each of which complained, in effect, of the action and ruling of the district court of Brewster county in refusing appellant's application to remove this cause into the circuit court of the United States and in proceeding with this cause after the presentation of the petition and bond for such removal.

Second.

The said court of civil appeals erred in overruling and holding not well taken appellant's fifth assignment of error and in deciding that the special acts of the legislature of the State of Texas approved February 11th, 1850; September 4th, 1850; January 29th, 1853; February 4th, 1854, and July 27th, 1870, chartering and amending the charter of plaintiff in error railway company, and the general acts of the legislature of the State of Texas approved January 30th, 1854, January 11th, 1862, and November 13th, 1866, and the acceptance of said laws, and the construction by plaintiff in error railway company at large expense of an important part of its line of railway prior to the adoption of the constitution of Texas in 1869, and the completion of its entire line subsequently and in due time did not constitute a valid contract between the State of Texas and said railway company, entitling said railway company and creating in it a vested right to lands granted by said laws and earned by said railway company thereunder, including the lands involved in this suit, and in holding and deciding in effect that said contract could be and was impaired and the right of said railway company to said land was divested by the constitution of Texas adopted in 1869, contrary to and in violation of the Constitution of the United States, and especially article 1, section 10, thereof, and section 1, article XIV, of the amendments thereof.

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224 Third.

The said court of civil appeals erred in not deciding that the special acts of the legislature of the State of Texas approved February 11th, 1850; September 4th, 1850; January 29th, 1853; February 4th, 1854, and July 27th, 1870, chartering and amending the charter of plaintiff in error railway co npany, and the general acts of the legislature of the State of Texas approved January 30th, 1854, January 11th, 1862, and November 13th, 1866, and the acceptance of said laws, and the construction by plaintiff in error railway company at large expense of an important part of its line of railway prior to the adoption of the constitution of Texas in 1869, and the completion of its entire line subsequently and in due time constituted a valid contract between the State of Texas and said railway company entitling said railway company and creating in it a vested right to the lands granted by said laws and earned by said railway company thereunder, including the lands involved in this suit, and in not holding and deciding in effect that said contract could not be and was not impaired and the right of said railway company to said land was not divested by the constitution of Texas adopted in 1869, and that in so far as said State constitution attempted to impair such contract and divest such right the same was and is contrary to and in violation of the Constitution of the United States, and especially article 1, section X thereof, and section 1 of article XIV of the amendment- thereof, and therefore void.

Fourth.

The said court of civil appeals erred in overruling and holding not well taken appellant's ninth assignment of error and in deciding that plaintiff in error railway company had not, under the general act of the legislature of the State of Texas approved August 16th, 1876, by constructing and completing its road between San Antonio and El Paso, a distance of 623 miles, in consideration of the grant of sixteen sections of land made by said act for each mile of road so constructed, acquired a contract and vested right to and was entitled to hold under the grant thus made the lands involved in this suit, which contract and vested right could not be impaired or divested by the general act of the legislature of the State of Texas approved April 22, 1882, and in not deciding that the last-mentioned act, which attempted to repeal the laws granting such lands to said
225 railway company, was and is contrary to and in violation of the Constitution of the United States, and especially article 1 of section X thereof and section 1 of article XIV of the amendments thereof, and could not, therefore, impair said company's contract right or divest it of said lands.

Fifth.

Said court of civil appeals erred in overruling and holding not well taken appellant's tenth assignment of error and in deciding that plaintiff in error railway company had not, under the general act of the legislature of the State of Texas approved August 16th,

BLEED THROUGH

1876, by constructing and completing its road between San Antonio and El Paso, a distance of 623 miles, in consideration of the grant of sixteen sections of land made by said act for each mile of road so constructed, acquired a contract and vested right to and was entitled to hold under the grant thus made the lands involved in this suit, which contract and vested right could not be impaired or divested by the general act of the legislature of the State of Texas approved April 22, 1882, and in not deciding that the last-mentioned act, which attempted to repeal the laws granting such lands to said railway company, was and is contrary to and in violation of the Constitution of the United States, and especially article 1 of section X thereof and section 1 of article XIV of the amendments thereof, and could not, therefore, impair said company's contract right or divest it of said lands.

Sixth.

Said court of civil appeals erred in overruling and holding not well taken appellant's eleventh assignment of error and in deciding that plaintiff in error railway company had not, under the general act of the legislature of the State of Texas approved August 16th, 1876, by constructing and completing its road between San Antonio and El Paso, a distance of 623 miles, in consideration of the grant of sixteen sections of land made by said act for each mile of road so constructed, acquired a contract and vested right to and was entitled to hold under the grant thus made the lands involved in this suit, which contract and vested right could not be impaired or divested by the general act of the legislature of the State of Texas approved April 22, 1882, and in not deciding that the last-mentioned act, which attempted to repeal the laws granting such land to said railway company, was and is contrary to and in violation of the
226 Constitution of the United States, and especially article 1 of section X thereof and section 1 of article XIV of the amendments thereof, and could not, therefore, impair said company's contract right or divest it of said lands.

Seventh.

Said court of civil appeals erred in overruling and holding not well taken appellant's thirteenth assignment of error and in deciding that plaintiff in error railway company had not, under the general act of the legislature of the State of Texas approved August 16th, 1876, by constructing and completing its road between San Antonio and El Paso, a distance of 623 miles, in consideration of the grant of sixteen sections of land made by said act for each mile of road so constructed, acquired a contract and vested right to and was entitled to hold under the grant thus made the lands involved in this suit, which contract and vested right could not be impaired or divested by the general act of the legislature of the State of Texas approved April 22, 1882, and in not deciding that the last-mentioned act, which attempted to repeal the laws granting such lands to said railway company, was and is contrary to and in violation of the Constitution of the United States, and especially article 1 of sec-

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tion X thereof and section 1 of article XIV of the amendments thereof, and could not, therefore, impair said company's contract right or divest it of said lands.

Eighth.

Said court of civil appeals erred in overruling and holding not well taken appellant's fourteenth assignment of error and in deciding that plaintiff in error railway company had not, under the general act of the legislature of the State of Texas approved August 16th, 1876, by constructing and completing its road between San Antonio and El Paso, a distance of 623 miles, in consideration of the grant of sixteen sections of land made by said act for each mile of road so constructed, acquired a contract and vested right to and was entitled to hold under the grant thus made the lands involved in this suit, which contract and vested right could not be impaired or divested by the general act of the legislature of the State of Texas approved April 22, 1882, and in not deciding that the last-mentioned act, which attempted to repeal the laws granting such lands to said railway company, was and is contrary to and in violation of the Constitution of the United States, and especially
227 article 1 of section X thereof and section 1 of article XIV of the amendments thereof, and could not, therefore, impair said company's contract right or divest it of said lands.

Ninth.

Said court of civil appeals erred in overruling and holding not well taken appellant's fifteenth assignment of error and in deciding that plaintiff in error railway company had not, under the general act of the legislature of the State of Texas approved August 16th, 1876, by constructing and completing its road between San Antonio and El Paso, a distance of 623 miles, in consideration of the grant of sixteen sections of land made by said act for each mile of road so constructed, acquired a contract and vested right to and was entitled to hold under the grant thus made the lands involved in this suit, which contract and vested right could not be impaired or divested by the general act of the legislature of the State of Texas approved April 22, 1882, and in not deciding that the last-mentioned act, which attempted to repeal the laws granting such lands to said railway company, was and is contrary to and in violation of the Constitution of the United States, and especially article 1, section X, and section 1 of article XIV of the amendments thereof, and could not, therefore, impair such company's contract right or divest it of said lands.

Tenth.

Said court of civil appeals erred in overruling and holding not well taken appellant's seventeenth assignment of error and in deciding that plaintiff in error railway company had not, under the general act of the legislature of the State of Texas approved August 16, 1876, by constructing and completing its road between San Antonio and

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El Paso, a distance of 623 miles, in consideration of the grant of sixteen sections of land made by said act for each mile of road so constructed, acquired a contract and vested right to and was entitled to hold under the grant thus made the lands involved in this suit, which contract and vested right could not be impaired or divested by the general act of the legislature of the State of Texas approved April 22, 1882, and in not deciding that the last-mentioned act, which attempted to repeal the laws granting such lands to said railway company, was and is contrary to and in violation of the Constitution of the United States, and especially article 1 of section X thereof, and section 1 of article XIV of the amendments
228 thereof, and could not, therefore, impair said company's contract right or divest it of said lands.

Eleventh.

Said court of civil appeals erred in holding and deciding that plaintiff in error railway company had not, under the general act of the legislature of the State of Texas approved August 16th, 1876, by constructing its road between San Antonio and El Paso, a distance of 623 miles, in consideration of the grant of sixteen sections of land made by said act for each mile of road so constructed, acquired a contract and vested right to and was entitled to hold under the grant thus made the lands involved in this suit, which contract and vested right could not be impaired or divested by the general act of the legislature of the State of Texas approved April 22, 1882, and in not deciding that the last-mentioned act, which attempted to repeal the laws granting such lands to said railway company, was and is contrary to and in violation of the Constitution of the United States, and especially article 1 of section X thereof and section 1 of article XIV of the amendments thereof, and could not, therefore, impair said company's contract right or divest it of said lands.

Twelfth.

Said court of civil appeals erred in affirming the judgment of the district court in and for Brewster county, whereby the State of Texas had and recovered the said lands from plaintiffs in error, and in not reversing the said judgment.

Wherefore The Galveston, Harrisburg & San Antonio Railway Company, E. P. Hill, and W. N. Shaw, plaintiff- in error, pray that the judgment of the said court of civil appeals be reversed and said cause be remanded, and for such further proceedings as law and justice may require.

J. P. BLAIR,
T. D. COBBS,
JAS. A. BAKER,
R. S. LOVETT,

Attorneys for The Galveston, Harrisburg & San Antonio Railway Company, E. P. Hill, and W. N. Shaw, Plaintiffs in Error.

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Endorsed: No. 385. G., H. & S. A. R'y Co. *et al. vs.* The State of Texas. Assignments of error Filed in the court of civil ap-
229 peals, at San Antonio, Texas, June 24, 1897. H. E. Hildebrand, clerk.

Citation in Error.

UNITED STATES OF AMERICA, *ss:*

To the State of Texas, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the court of civil appeals in and for the fourth supreme judicial district of Texas, wherein The Galveston, Harrisburg & San Antonio Railway Company, E. P. Hill, and W. N. Shaw are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against said plaintiffs in error, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this the 24th day of June, in the year of our Lord one thousand eight hundred and ninety-seven.

J. H. JAMES,
Chief Justice of the Court of Civil Appeals for the Fourth Supreme Judicial District of Texas.

Came to hand on the 5th day of July, 1897, and executed on the 6th day of July, 1897, by delivering, at Austin, Texas, in my district, to C. A. Culberson, governor of the State of Texas, and to M. M. Crane, attorney general of the State of Texas, each in person a true copy of this writ.

R. C. WARE,
U. S. Marshal,
By FRED. PECK, *Deputy.*

Serving 2 copies of citation, $4.00.

Endorsed: Galveston, Harrisburg & San Antonio Railway Company, plaintiff in error, *vs.* The State of Texas, defendant in
230 error. Citation on writ of error. Filed in the court of civil appeals, at San Antonio, Texas, July 10, 1897. H. E. Hildebrand, clerk.

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Bill of Costs.

Cost bill in court of civil appeals, San Antonio, Texas.

G., H. & S. A. R'y Co., Appellant,
vs.
STATE OF TEXAS, Appellee.
No. 385. From Brewster County.

Name of principals—G., H. & S. A. R'y Co.
Names of sureties—E. P. Hill, W. N. Shaw.
Record filed December 13, 1893.
Disposed of June 3, 1896.
How decided—affirmed.
Opinion by Fly, A. J.

Filing record	$	50
Docketing cause		50
Appearances	1	00
Filing briefs	2	00
Filing and entering motion for rehearing		35
Orders	2	50
Precept	1	00
Filing extra papers	1	30
Making certified copy of motion	5	50
Judgment	1	00
Filing opinion		10
Taxing costs		50
Certified copy bill of costs	1	00
Certificate, with seal		50
Mandate	1	50
Recording	3	50
Notices	5	00
Clerk's costs at Austin supreme court on cert. question	28	55
Sheriff's fees	1	00
231 Transcript to supreme court of Texas	1	50
Express charges to and from supreme court		70
Costs in supreme court of Texas on application for writ of error	8	00
Total	$67	50
Transcript to Supreme Court of the United States	150	00
Total	$217	50

THE STATE OF TEXAS:

I, H. E. Hildebrand, clerk of the court of civil appeals of Texas, at San Antonio, hereby certify that the above and foregoing bill of costs for the sum of $217.50 *dollars* is true and correct.

Given under my hand and seal of office this the 10th day of July, A. D. 1897.

H. E. HILDEBRAND, *Clerk.*

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Clerk's Certificate to Transcript.

THE STATE OF TEXAS, }
County of Bexar. }

I, H. E. Hildebrand, clerk of the court of civil appeals, 4th supreme judicial district, at San Antonio, Texas, do hereby certify and return in obedience to the writ of error herein granted that the above and foregoing is a true and complete transcript of the record of all the proceedings had in said court and all of the papers filed wherein The Galveston, Harrisburg & San Antonio Railway Company was appellant and The State of Texas was appellee, as the same appear from the records and files of said court now remaining in my custody and control.

I further certify that the original writ of error and
232 citation, with proof of service, have been returned with this record to the clerk of the Supreme Court of the United States.

I further certify that a copy of the writ of error has been retained in my office for the defendant in error.

To certify all which witness my official signature and seal of said court, at office, in the city of San Antonio, this the 10th day of July, A. D. 1897.

[Seal Court of Civil Appeals of the State of Texas.]

H. E. HILDEBRAND,
Clerk Court of Civil Appeals, Fourth Supreme Judicial District of Texas, at San Antonio.

233 In the Court of Civil Appeals, Fourth Supreme Judicial District of Texas.

THE GALVESTON, HARRISBURG & SAN ANTONIO RAILWAY COMPANY *et al.* }
vs. } No. 385.
THE STATE OF TEXAS. }

To any justice of the Supreme Court of the United States or the chief justice of the court of civil appeals in and for the fourth supreme judicial district of Texas:

Your petitioners, The Galveston, Harrisburg & San Antonio Railway Company, a railroad corporation created under and by virtue of the laws of the State of Texas, and E. P. Hill and W. N. Shaw, both residents of Harris county, Texas, respectfully represent that in the above numbered and entitled cause, then pending therein on appeal from the district court of Brewster county, wherein petitioner The Galveston, Harrisburg & San Antonio Railway Company was the only party appellant and The State of Texas was the only appellee, and petitioners E. P. Hill and W. N. Shaw were the sureties and the only sureties on the appeal bond of appellant, the court of

vil appeals in and for the fourth supreme judicial district of the ate of Texas, on the 29th day of April, 1896, affirmed a judgment said cause rendered on the 13th day of September, 1893, by the district court in and for Brewster county, Texas, in favor of
4 The State of Texas, as plaintiff, and against petitioner The Galveston, Harrisburg & San Antonio Railway Company, as fendant, in said district court, and said court of civil appeals at e same time rendered judgment against petitioners Hill and Shaw, well as said railway company, for all costs of suit; that thereafter d in due time petitioner railway company filed in the said court civil appeals its motion for a rehearing, which was thereafter, to t, on the third day of June, 1896, by said court overruled and de- ed; that thereafter and in due time petitioner railway company plied in due form and as authorized by law to the supreme court the State of Texas for a writ of error in said cause to the said urt of civil appeals; which application was thereafter, to wit, on e 6th day of May, 1897, by said supreme court denied and the rit of error prayed for by petitioner railway company refused; hereupon the said judgment of the said court of civil appeals, hich is the highest court of said State in which a decision in said it could be had, became and is final.

And petitioners say that they are aggrieved by the said judgment d the proceedings in said suit, and that in the said judgment and roceedings had prior thereunto in said cause errors were com- itted to the prejudice of petitioners, because they say there was in id suit drawn in question the validity of a statute of or an author- y exercised under the United States and the decision in such suit as against their validity, and there was drawn in question the alidity of a statute or constitution of or an authority exercised nder a State, on the ground of their being repugnant to the Con- itution or laws of the United States, and the decision in said suit as in favor of their validity, and that titles, rights, privileges, and mmunities were in said suit claimed by petitioners under the con- itution and statutes of and commissions held and an authority xercised under the United States and the decision in said suit was against the titles, rights, privileges, and immunities specially
35 set up and claimed therein by petitioners under such constitution, statutes, commissions, and authority, as will herein- ter more fully appear.

Your petitioners say that this suit was instituted in the district ourt of Brewster county, Texas, by The State of Texas, as plaintiff, gainst The Galveston, Harrisburg & San Antonio Railway Com- any, petitioner, as defendant, for the recovery of thirteen hundred nd eighty-three sections, tracts, or parcels of land, containing in he aggregate, say, 879,078$\frac{1}{10}$ acres, situated in the counties of Jeff avis, Presidio, Brewster, Kimble, San Saba, Val Verde, Crockett, cCulloch, Pecos, Buchel, Reeves, Schleicher, Sutton, and Zavalla, hich had been theretofore granted to petitioner railway company y the State of Texas out of the unappropriated public domain of id State, under laws of said State hereinafter referred to, to aid and nduce said railway company to construct the lines of railway which

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it was authorized by its charter and said laws to construct; that the ground upon which the State of Texas in said suit sought to recover said lands was, in effect, that at the time the road for which they were granted was constructed by petitioner railway company and at the time the certificates for said lands were issued and located and said lands were acquired and patents for a large part thereof were issued the laws of said State granting said lands to said railway company had been, in effect, repealed by the constitution of 1869, and that there was then no valid law of the State making or authorizing such grant.

Petitioners further represent that petitioner railway company was originally incorporated under the name of the "Buffalo Bayou, Brazos & Colorado Railway Company" by an act of the legislature of the State of Texas entitled "An act to incorporate the Buffalo Bayou, Brazos & Colorado Railroad Company," approved February 11th, 1850, with authority to locate, construct, own, and maintain a railway commencing at a suitable point on Buffalo bayou
236 between Lynchburg and Houston, in the county of Harris, and thence running by such course and to such point at or near the Brazos river between the towns of Richmond and Washington, inclusive, as said company should deem most suitable, with the privilege of making, owning, and maintaining such branches of said railway as it might deem expedient (Gen. Laws 1850, page-194–198); that said company was thereafter organized in pursuance of said act of incorporation and irregularities in its incorporation were cured by another act of the legislature of the State of Texas approved September 4th, 1850, and its organization was thereby validated (Gen. Laws 1850, page- 13, 14); that by another act of the legislature of the State of Texas entitled "An act to amend the act to incorporate the Buffalo Bayou, Brazos & Colorado Railway Company," approved January 29th, 1853, said company was "invested with the right of locating, constructing, owning, and maintaining a railway commencing at a suitable point on Buffalo bayou, in the county of Harris, and thence running by such course and to such point or points at or near the Brazos and Colorado rivers, or across the same, as said company may deem advisable, with the privilege of making, owning, and maintaining such branches to said road as they may deem expedient," and said company was also by said act granted eight sections of land of six hundred and forty acres each for every mile of railway actually completed and ready for use, and provisions were made by said act for the inspection of the road as the same should be completed by the State engineer or a commissioner to be appointed by the governor and for the issuance of certificates for said lands upon the report from time to time made or to be made by such engineer (Special Laws 1853, page- 3–5); that by a general law passed by the legislature of the State of Texas entitled "An act to encourage the construction of railroads in Texas by donations of land," approved January 30th, 1854, there
237 was granted to every railroad company chartered by the legislature of the State of Texas theretofore or thereafter constructing within the limits of Texas a section of twenty-five miles

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or more of railroad sixteen sections of land for every mile of road so constructed and put in running order, and provisions were made in said act for the survey and location of the lands thus granted (Gen. Laws 1854, page- 11–15); that by another special act of the legislature of the State of Texas approved February 4th, 1854 (Special Laws 1854, page 69), entitled "An act to amend an act incorporating the Buffalo Bayou, Brazos & Colorado Railroad Company, approved February eleventh, eighteen fifty," it was provided—

"That the Buffalo Bayou, Brazos & Colorado Railroad Company shall be entitled to all the rights, privileges and benefits accruing from any general law or laws that have or may hereafter be passed by this State to encourage the constructing of railroads in the same manner and to the same extent as if the gauge of said road was the same now fixed, or which may be hereafter fixed upon by this State,"

Whereby petitioners say that all the benefits of the general act of January 30th, 1854, above referred to, were expressly conferred upon petitioner railway company, and there was by said general act of January 30th, 1854, and the special act of February 4th, 1854, granted to petitioner railway company by the State of Texas sixteen sections of land for every mile of road that it should construct; that by another special act of the legislature of the State of Texas, also approved February 4th, 1854, entitled "An act supplementary to an act to amend an act to incorporate the Buffalo Bayou, Brazos & Colorado Railroad Company, passed at the present session of the legislature," it was provided that if said company should avail itself of the act to which said act was a supplement or accept any donation of land from the State it should not be entitled to receive such donation under the provisions of that law or any law that had theretofore been passed for its benefit for any por-
238 tion of its road which should not be completed and ready for use within ten years from and after the passage of that act; and it was also provided that the company should restrict itself to an extension of its existing road to Austin, in the county of Travis, crossing the Brazos river at a point between the town of Richmond, in Fort Bend county, and Hidalgo Falls, in Washington county, with the right of extending its road from Austin to and connecting with any road running north of Austin toward the Pacific ocean, the connection to be made between the 96th and 98th parallel- of longitude; and it was also provided that said company should have no right to build branches from its main line (Special Laws 1854, page 70); that by an act approved January 11th, 1862, entitled "An act for the relief of railroad companies" (Gen. Laws 1862, pages 46, 47), it was provided, in effect, that the failure of any railroad company in this State to complete any section or fraction of a section of its road, as required by then existing laws, should not operate as a forfeiture of its charter or of the lands to which it would be entitled under the provisions of an act entitled "An act to encourage the construction of railroads in Texas by donation of lands, approved January 30th, 1854," and the several acts supplementary thereto, provided such company should complete such section or

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fraction of a section as would entitle it to donations of land under then existing laws within two years after the close of the then prevailing war between the Confederate States and the United States; and by another act also approved January 11th, 1862 (Gen. Laws 18—, pages 43, 44), entitled "An act for the relief of companies incorporated for purposes of internal improvement by allowing them further time for performance on account of the pending war," it was provided, in effect, that the time of the continuance of the prevailing war between the Confederate States and the United States should not be computed against any internal improvement
239 company in reckoning the period allowed them in their charters by any law, general or special, for the completion of any work contracted by them to do; that by a general act entitled "An act for the benefit of railroad companies," approved November 13th, 1866, it was, among other things, provided that "the grant of sixteen sections of land to the mile to railroad companies heretofore or hereafter constructing railroads in Texas shall be extended under the same restrictions and limitations heretofore provided by law for ten years after the passage of this act." (Gen. Laws 1866, page 212.)

Petitioners further represent that petitioner railway company, proceeding under its charter and the various acts of the legislature of the State of Texas above referred to, commenced in due time after its incorporation in 1850 the construction of its line of railway at Harrisburg, on Buffalo bayou, in Harris county, Texas, and had completed and put the same in running order in due time and as required by its charter and the laws of Texas; thence to Alleyton, in Colorado county, a distance of $79\frac{7}{10}$ miles, prior to July 1st, 1868, and had other parts of its line in process of construction; that the constitution of Texas adopted in 1869 and known as the "Constitution of 1869" took effect on the date of its acceptance by Congress, which was March 30th, 1870, as decided in Grigsby *vs.* Peak, 57 Tex., 142, or on the date of its adoption, which was December 3rd, 1869, as subsequently decided in Peak *vs.* Swindell, 68 Tex., 242; but, at all events, petitioner company had completed and put in operation more than seventy-nine miles of its line of road and had under construction the remainder prior to the adoption of that constitution. Section 6, article X, of the constitution of 1869 reads as follows:

"The legislature shall not hereafter grant lands to any person or persons, nor shall any certificates for land be sold at the land office except to actual settlers upon the same, and in lots not exceeding one hundred and sixty acres."

240 That on the 27th day of July, 1870, the legislature of the State of Texas passed an act entitled "An act supplementary to the act to incorporate the Buffalo Bayou, Brazos & Colorado Railway Company and of the other special acts relating to said company" (Special Laws 1870, page- 45–49), whereby the name of petitioner railway company was changed to the "Galveston, Harrisburg and San Antonio Railway Company;" that said act also authorized petitioner railway company to consolidate with its existing railroad the bridge built by the Brazos Iron Bridge Com-

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pany over the Brazos river at Richmond and the five miles of railroad, more or less, from the town of Alleyton to the town of Columbus built under the charter granted to the Columbus Tap Railroad Company, including the bridge over the Colorado river at Columbus, and to extend its existing line of railroad from Columbus, in Colorado county, to San Antonio, in the county of Bexar, within four years from the passage of the act, and thence to a terminus on the Rio Grande river by such route as the directors should deem most feasible, with a branch from the most suitable point to New Braunfels, in Comal county, or to connect with any line of railroad that might be constructed from San Antonio to the Rio Grande south of the latitude of the city of Austin and the Colorado river instead of building its own line beyond the point of said connection; and it was also authorized to connect with any line of railroad that might be constructed or under construction and designed to form a part of any railroad line to the Pacific south of the 35th parallel of latitude.

By section 8 of said act it was provided as follows:

"SEC. 8. That in case it shall be made to appear to the governor that there has not been issued upon said railroad the full quantity of sixteen sections of land scrip for every mile of the same that was constructed and put in running order prior to the war of the late rebellion, in accordance with the provisions of the charter and of the general laws of the State, in force at the time regulating railroads, there shall be issued to said new company said scrip to the amount of any such deficiency, notwithstanding said rail-
241 road may not have been constructed and completed at the rate of twenty-five miles each year after the construction of the first twenty-five miles, as provided in the act of January 30th, 1854."

And by section 11 of said act it was provided as follows:

"SEC. 11. That said new company shall be entitled to the same or similar rights and relief, except State aid in bonds, or endorsement of, or guaranty of interest on bonds, granted to or provided for any other railroad company by the legislature, and upon the same or similar terms and conditions, so far as such rights or relief are, in their character, applicable to said new company or its line, or lines of railroad."

And by section 12 of said act it was provided as follows:

"SEC. 12. That nothing in this act shall be so construed as to deprive any party interested, of the right to disprove any assumed fact stated in the preamble; provided, that nothing in this act contained shall be construed as reviving or renewing any land grant to said company for road hereafter to be completed, which it does not possess by existing law."

Other rights were conferred upon said company and burdensome obligations were imposed upon it by said act.

Petitioner railway company proceeded with the extension of its road west of the Colorado river and completed the same to the West Navidad river, a distance of twenty-five miles further, December 19th, 1873, and completed an additional twenty-five miles June

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25th, 1874, and an additional twenty-five miles January 16th, 1875, an additional twenty-five miles July 12th, 1875, an additional twenty-five miles October 27th, 1876, and the whole line between the Colorado river and the city of San Antonio was completed and put in operation February 13th, 1877, and in due time thereafter the entire line was completed westward to El Paso, Texas, a distance of 623.14 miles. The road was inspected from time to time, as sections of twenty-five miles were completed, by engineers appointed by the governor, and upon the report of the engineer and approval of the same by the governor the commissioner of the general land office issued to the company certificates for land at the rate of sixteen sections of six hundred and forty acres per mile of road, as au-
242 thorized by the aforesaid act of January 30th, 1854, and Nov. 13, 1866, for that part of the road between the Colorado river and the city of San Antonio, as certificates had been theretofore issued at the same rate for that part of the road from Harrisburg to the Colorado river, but the State refused to issue certificates for that part of the line from San Antonio to El Paso, six hundred and twenty-three and fourteen one-hundredths miles in length, although a part of it had been inspected by the State engineer under the direction of the governor, the refusal to issue certificates for that part of the line being based upon the act entitled "An act to repeal all laws granting lands or land certificates to any person, firm, corporation, or company for the construction of railroads, canals, and ditches," approved April 22nd, 1882. As the certificates were issued to the company, the lands were surveyed at large expense and certificates located thereon in the manner provided by law, and patents were also issued for a large part thereof, and the company has ever since paid to the State all taxes, and which were regularly assessed thereon.

Section 6, article X, of the constitution of 1869, above quoted, was amended by a resolution passed by the legislature May 17th, 1871 (Gen. Laws 1871, page 60), and the amendment was adopted by a vote of the people on the 5th, 6th, 7th, and 8th days of November, 1872, and was ratified by the legislature March 19th, 1873 (Gen. Laws 1873, page- 224, 225), and the amendment became effective on that date and removed the restriction imposed upon the grant of lands in aid of railroads.

Petitioner railway company in said suit in the district court of Brewster county in due time specially set up and claimed, and throughout the subsequent proceedings in said cause in appropriate manner specially claimed and contended, that by the acceptance of the various acts of the legislature of the State of Texas hereinbefore mentioned, and the land grant thereby made to it in consider-
ation of the construction of its road, and by promptly enter-
243 ing upon and in due time constructing and completing an important and valuable part of its line at very large expense, before the adoption of the constitution of 1869, and by subsequently completing in due time its entire line petitioner railway company had acquired, under such laws and by the construction of its line, a contract and vested right to the lands granted to it by the

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State, as aforesaid, and earned by it, which contract and right could not be impaired or divested by the constitution of Texas adopted in 1869 or any other pretended law or act of said State contrary to the Constitution of the United States, especially article 1, section 10, thereof, which denies to any State power to pass any law impairing the obligation of contracts, and section 1, article XIV, of the amendments thereof, prohibiting any State from depriving any person of property without due process of law (Davis *vs.* Gray, 16 Wall., 203). But petitioners say that the said district court of Brewster county and the said court of civil appeals, by the judgment complained of in said suit, in effect decided and holds that the said constitution of 1869 operated to deprive petitioner railway company of the said lands, thus holding in effect that the said constitution of Texas adopted in 1869 impaired the contract and vested right aforesaid and deprived petitioner railway company of its said property without due process of law, contrary to the Constitution of the United States, and especially the provisions thereof hereinbefore referred to; and by way of special illustration of such decision and holding, petitioners say that the supreme court of Texas, in their opinion delivered March 19th, 1896, in this cause, answering questions in this cause certified for their decision by the said court of civil appeals, expressly ruled and decided for the government of said court of civil appeals in effect that change of the route of petitioner's
244 road authorized by the aforesaid act of July 27th, 1870, or, rather, the removal thereby of the restriction with respect to its route imposed by the second act of February 4th, 1854, above mentioned, would have carried with it the right of petitioner railway company under its charter and the laws aforesaid passed prior to the adoption of the constitution of 1869 to the grant under such charter and laws of sixteen sections of land for each mile of road it should construct and did construct along said line but for the adoption of the constitution of 1869, and that the adoption of said constitution deprived petitioner railway company of such lands (the same being the lands in controversy) to which it was entitled under its charter and the laws passed prior to the adoption of said constitution and which it had earned by the construction at large expense of an important part of its line, the said court thereby holding in effect that said constitution impaired petitioner railway company's contract and vested right, but that nevertheless said constitution was valid, and the same decision was made by the said court of civil appeals.

Petitioners further represent that on the 16th day of August, 1876, the legislature of the State of Texas, as it was by sec. 3, art. XIV, and other provisions of the constitution of 1876 expressly authorized to do, passed a general law entitled "An act to encourage the construction of railroads in Texas by donations of land," whereby it was provided that any railroad company theretofore chartered or which should be thereafter organized under the general laws of the State should, upon the completion of a section of ten miles or more of its road, be entitled to receive and there was thereby granted to every such railroad company from the State

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sixteen sections of land for every mile of its road so completed and put in good running order; and said act prescribed the usual formalities for ascertaining compliance on the part of the railroad companies with the provisions of the act, the issuance of certificates, etc. (Gen. Laws 1876, page- 153, 154). After the passage of
245 said act petitioner railway company constructed and completed that part of its line between the Guadalupe river and San Antonio, a distance of about thirty-six miles, for which it received certificates and lands from the State, and thereafter, and while said act was in force and before the attempt to repeal the same by the act approved April 22nd, 1882, hereinbefore mentioned, said company extended and completed its line of road and put the same in good running order from the city of San Antonio to El Paso, a distance of 623.14 miles, for which the State refused to issue said company certificates or give it lands because of the passage of the said repealing act of April 22, 1882, the said company having completed its said road prior to the passage of said last-mentioned act. Petitioner railway company by its answer, filed in due time and form in this cause in the district court of Brewster county, alleged the construction and completion of its said road westward from San Antonio to the Rio Grande river at El Paso, a distance of 623.14 miles, prior to the passage of said act of April 22, 1882, and that it had thereby earned and was entitled to lands from the State at the rate of sixteen sections of six hundred and forty acres each per mile of completed road, amounting in the aggregate to 6,380,953 acres; that the governor of the State, in obedience to the law, appointed an engineer to inspect a section of said road, who inspected the same for a distance of eleven miles west of San Antonio and reported that the same had been completed and was in good running order, as required by law, but that the governor thereafter refused to appoint any engineer to inspect the rest of said road, and the governor and the commissioner of the general land office had ever since refused to issue petitioner railway company any certificates for the lands to which it was entitled for the construction of said 623.14 miles west of San Antonio, basing their refusal
246 upon the aforesaid act of April 22nd, 1882, which they claimed repealed the laws entitling said company to said land; that by the construction and completion of said 623.14 miles of said railway while said law was in force petitioner railway company had acquired a contract and vested right to said lands which could not be impaired or taken away by the said act of April 22nd, 1882, and that said last-mentioned act, passed after the acceptance of the State's offer, after the construction in reliance thereon, at enormous expense, of said 623.14 miles of road, after the State had secured the benefits of the quasi-public work, the contemplated consideration of the land grant was, so far as it affected petitioner's right, unconstitutional, null and void, because it sought to impair the obligation of the contract, in violation of section X, article 1, of the Constitution of the United States, and amounted to a deprivation of property without due process of law, in violation of section 1 of the fourteenth amendment of said Constitution; and petitioner

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railway company in said answer prayed in effect that the State's suit be dismissed, and also in effect that the court adjudge and decree that the petitioner railway company had earned and was entitled to receive from the State of Texas sixteen sections of land for each of the 623.14 miles of road it had constructed west of San Antonio, and also that it be held and decreed to be entitled to the land described in the State's petition and sued for herein by reason of the construction of said 623.14 miles of road, if not otherwise entitled thereto, claiming that it had also acquired a contract and vested right to said lands under the act of August 16th, 1876, if not otherwise, which contract and right *was* sought to be impaired and taken away by the aforesaid act of April 22, 1882, contrary to the provisions of the Constitution of the United States hereinbefore referred to; but petitioners say that the said district court of
247 Brewster county and the said court of civil appeals, by the judgment complained of in said suit, in effect decided and held that petitioner railway company was not entitled to said lands, thereby holding and deciding in effect that the aforesaid act of the legislature of the State of Texas approved April 22nd, 1882, operated to deprive petitioner railway company of the said lands, thus holding that the said act impaired the contract and vested right and deprived petitioner of its said property without due process of law, contrary to the Constitution of the United States and especially the provisions thereof hereinbefore referred to.

Petitioners further represent that it appeared from the plaintiff's statement of its own claim, as contained in its petition in this suit in the district court in and for Brewster county, that this suit was and is one arising under the Constitution and laws of the United States, in this: Plaintiff alleged that petitioner railway company was originally incorporated by the special act of the legislature of Texas approved February 11th, 1850, and hereinbefore referred to; that the act of July 27th, 1870, hereinbefore referred to, was passed by the legislature of the State of Texas, and that at the time said act was passed "the constitution of 1869–'70 forbade the legislature from authorizing or granting lands to railway companies for the construction of their roads, etc.," and also alleged that "the issuance of certificates described in plaintiff's petition was in violation of the constitution and laws of the State, etc." Said petition also referred to the special acts approved February 4th, 1854, hereinbefore mentioned. It sufficiently appeared from plaintiff's petition and also from the aforesaid act of July 27th, 1870, specially pleaded therein, that that part of petitioner railway company's line of railway extended to Alleyton had been constructed and was in opera-
248 tion prior to the constitution of 1869. It also appeared from the special acts incorporating and relating to petitioner, as pleaded by the State, and from the general laws of January 30th, 1854, referred to in and made a part of such special acts, that petitioner railway company was entitled to sixteen sections of land for each mile of road it should construct, unless the grant thus made had been in some manner withdrawn, and the constitution of 1869 was specially set up by the State in its petition as a reason why peti-

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tioner railway company was not entitled to the grant for the construction of its line to San Antonio. Petitioner railway company in due time presented to the said district court its application to remove this cause into the Federal court upon the ground, in effect, that the suit was one arising under the Constitution and laws of the United States, claiming that petitioner had proceeded under its charter and the acts relating to it to construct, and had constructed prior to the adoption of the constitution of 1869, an important part of its line at large expense, and had acquired thereby and under the laws above mentioned a contract and vested right to the land grant in question, and that the constitution of 1869, pleaded and referred to in the State's petition, impaired the obligation of such contract, in violation of section X, article 1, of the Constitution of the United States, and deprived petitioner railway company of property without due process of law, in violation of section 1 of the fourteenth amendment of said Constitution; but said application to remove said cause into the circuit court of the United States was by said district court of Brewster county denied and refused, and said district court proceeded with the trial of the same; which action and ruling of said district court was, on appeal therefrom, as aforesaid, by petitioner railway company, affirmed by the said court of civil appeals by the judgment herein complained of,
249 whereby petitioners say that said court decided against the title, right, privilege, and immunity so specially set up and claimed in said suit by petitioners under the Constitution and statutes of the United States and the commission held and authority exercised under the United States.

Your petitioners refer to the assignment of errors filed herewith and pray that the same be considered for the purposes of this petition as a part hereof, and further pray that a writ of error may be allowed and issued herein to the said court of civil appeals in and for the fourth supreme judicial district of the State of Texas, which now has the record in said suit, for the removal of said cause into the Supreme Court of the United States, to the end that the errors in said judgment and in the proceedings in said cause may be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, and that the transcript of the record, proceedings, and papers in said cause, duly authenticated, may be sent to the said Supreme Court of the United States.

T. D. COBBS,
J. P. BLAIR,
JAS. A. BAKER,
R. S. LOVETT,
Attorneys for the Galveston, Harrisburg & San Antonio Railway Company, E. P. Hill, and W. N. Shaw, Petitioners.

Allowed by—

J. H. JAMES,
Chief Justice of the Court of Civil Appeals in and for the Fourth Supreme Judicial District of Texas.

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250 [Endorsed:] No. 385. The Galveston, Harrisburg & San Antonio Railway Co. *et al. vs.* The State of Texas. Petition to the United States Supreme Court for writ of error. Filed in the court of civil appeals, at San Antonio, Texas, Jun-24, 1897. H. E. Hildebrand, clerk.

251 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable judges of the court of civil appeals in and for the fourth supreme judicial district of the State of Texas, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court of civil appeals in and for the fourth supreme judicial district of Texas, before you or some of you, being the highest court of the said State in which a decision could be had in said suit between The Galveston, Harrisburg & San Antonio Railway Company, appellant, and The State of Texas, appellee, and E. P. Hill and W. N. Shaw, as sureties, on the appeal bond of said appellant, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under any State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of their validity, or wherein a title, right, privilege, or immunity was claimed under the Constitution or a treaty or statute of or commission held or authority exercised under the United States and the decision was against the title, right, privilege, or immunity specially set up or claimed by either party under such Constitution, treaty, statute, commission, or authority, a manifest error has happened, to the great damage of the said The Galveston, Harrisburg & San Antonio Railway Company and E. P. Hill and W. N. Shaw, the sureties on its appeal bond, as by their complaint appears, we, being willing that error, if any
252 hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within thirty days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the

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United States, the 24th day of June, in the year of our Lo
thousand eight hundred and ninety-seven.

[The seal of the U. S. Circuit Court, Western Dist. Texas, San Antonio

D. H. HART,
Clerk of the Circuit Court of the United States
for the Western District of Te
By —— ——, *Deputy.*

Allowed by—

J. H. JAMES,
Chief Justice of the Court of Civil Appeals of the
Fourth Supreme Judicial District of Texas.

253 [Endorsed :] G., H. & S. A. R'y Co. *et al.*, appellant-, v
State of Texas, appellee. Original writ of error. Fi
the court of civil appeals, at San Antonio, Texas, Jun- 24,
H. E. Hildebrand, clerk.

254 UNITED STATES OF AMERICA, *ss:*

To The State of Texas, Greeting:

You are hereby cited and admonished to be and appear at
preme Court of the United States, at Washington, within thirty
from the date hereof, pursuant to a writ of error filed in the cler
fice of the court of civil appeals in and for the fourth supreme ju
district of Texas, wherein The Galveston, Harrisburg & San An
Railway Company, E. P. Hill, and W. N. Shaw are plainti
error and you are defendant in error, to show cause, if any
be, why the judgment rendered against said plaintiffs in er
in said writ of error mentioned, should not be corrected and
speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice o
United States, this 24th day of June, in the year of our Lor
thousand eight hundred and ninety-seven.

J. H. JAMES,
Chief Justice of the Court of Civil Appeals for the
Fourth Supreme Judicial District of Te

255 Came to hand on the 5th day of July, 1897, and exe
on the 6th day of July, 1897, by delivering, at Austin, T
in my district, to C. A. Culberson, governor of the State of T
and to M. M. Crane, attorney general of the State of Texas, ea
person, a true copy of this writ.

R. C. WARE,
U. S. Marsh
By FRED. PECK, *Depu*

Serving 2 copyies of citation, $4.00.

256 [Endorsed:] Galveston, Harrisburg and San Antonio, Railway Company, plaintiff in error, *vs.* The State of Texas, defendant in error. Citation on writ of error. Filed in the court of civil appeals, at San Antonio, Texas, Jul- 10, 1897. H. E. Hildebrand, clerk.

Endorsed on cover: Case No. 16,634. Texas court of civil appeals, 4th supreme judicial district. Term No., 421. The Galveston, Harrisburg & San Antonio Railway Company and E. P. Hill and W. N. Shaw, plaintiffs in error, *vs.* The State of Texas. Filed July 22d, 1897.

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FILED
JAN 12 1898
JAMES H. McKENNEY
Clerk

Lovett & Blair for Pl'ffs in Error

Supreme Court of the United States.

OCTOBER TERM, 1897.

Filed Jan 12, 1898

No. 486.

THE GALVESTON, HARRISBURG AND SAN ANTONIO RAILWAY COMPANY and H. F. HILL and W. H. SEAY,

Plaintiffs in Error,

vs.

THE STATE OF TEXAS.

IN ERROR TO THE COURT OF CIVIL APPEALS FOR THE FOURTH SUPREME JUDICIAL DISTRICT OF THE STATE OF TEXAS.

Brief on Behalf of Plaintiffs in Error.

JAS. A. BAKER,
R. S. LOVETT,
JOSEPH PAXTON BLAIR,
Of Counsel for Plaintiffs in Error.

R. A. Brandon, Printer and Typewriter Manufacturer, N. Y.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 428.

THE GALVESTON, HARRISBURG AND SAN ANTONIO RAILWAY COMPANY and E. P. HILL and W. N. SHAW,
Plaintiffs in Error,

vs.

THE STATE OF TEXAS.

IN ERROR TO THE COURT OF CIVIL APPEALS FOR THE FOURTH SUPREME JUDICIAL DISTRICT OF THE STATE OF TEXAS.

BRIEF ON BEHALF OF THE PLAINTIFFS IN ERROR.

This suit was instituted on the 5th of January, 1893, in the District Court of Brewster County, Texas, by the State of Texas, as plaintiff, against the Galveston, Harrisburg and San Antonio Railway Company, as defendant, for the recovery of

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1,383 tracts of land, containing in the aggregate 879,070 1–20 acres of land situated in certain counties of the State. This land had been previously granted to the railway company by the State out of its unappropriated domain, under laws of the State passed for the purpose of inducing and aiding the railway company to construct the lines of railway which it was authorized by these laws and its charter to construct. The ground upon which the State sought to recover the lands in question was that, at the time the road for which they were granted was constructed by the railway company and the certificates therefor were issued and located, there were no valid laws of the State making or authorizing such grant of land; that if any such laws had once existed, which was denied, they had been repealed by the Constitution of 1869. The State Court decided that the laws under which the land had been granted to the railway company had been repealed by the Constitution of 1869, and, in so deciding, it overruled and denied a defense, specially pleaded and urged by the railway company, that, in so far as the provisions of the Constitution of 1869 could be construed as repealing the laws under which it was entitled to the grant of lands, they impaired

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the obligations of its contract with the State and deprived it of vested rights, in violation of the Constitution of the United States, especially Article I., Section 10, thereof, and Article XIV., Section 1, of the amendments.

The petition of the State describes the lands sought to be recovered by reference to exhibits annexed, which give the certificate numbers, number of acres, date of issuance of certificates, county of location, survey, block and abstract number, and whether and when patented. It appeared from this description that the certificates in question had been issued for sections of completed railroad, beginning at a point near the Colorado River and ending at a point near the Guadalupe River. The line of track starts near the Town of Columbus and extends westward to within about thirty-six miles of the City of San Antonio. Its total length is about ninety-five miles. The petition then alleges that each of the certificates referred to in the exhibits were issued to the Galveston, Harrisburg and San Antonio Railway Company, and were by that company located and surveyed upon the lands in controversy, and were returned to and are on file in the General Land Office of the State, and, in the cases enumerated

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in the exhibits, patents have been issued thereon; that, by reason of these locations and surveys, the railway company has entered upon and taken possession of the land, and now unlawfully withholds the same from the State. The petition next recites that the Buffalo Bayou, Brazos and Colorado Railroad Company was chartered by special act of the Legislature of the State of Texas, approved February 11, 1850; that, by special Act of the Legislature, approved February 11, 1854, that railroad company, and the defendant company, as its successor, was restricted to an extension of its road to Austin and to a line extending thence to a connection with any road running north of Austin to the Pacific Ocean; that said railroad companies were not entitled to receive any lands for the construction of any road from Columbus to San Antonio and westward for which it had received certificates; that, by special act of the Legislature, approved July 27, 1870, the name of the Buffalo Bayou, Brazos and Colorado Railroad Company was changed to The Galveston, Harrisburg and San Antonio Railway Company, the defendant: and, under the provisions of that special act, the defendant company, for the first time, was granted

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the authority to construct a railway to San Antonio from Columbus to the Guadalupe bridge and over the line for which the certificates were issued, and at that time the Constitution of 1869–70 forbade the Legislature to authorize or grant lands to railway companies for the construction of their roads, though no land was granted by said act. The petition then gives the dates between which each section of the line of railroad for which land certificates were issued was constructed and completed, and represents that every portion of the road from the Town of Columbus to the Guadalupe River was constructed and completed between July 27th, 1870, and October 27th, 8876. And it is averred that at no time during that period was there any valid law in existence authorizing the issuance to the railroad company of certificates for the construction of its line of road between the points named. The petition charges that the action of the State authorities in issuing and delivering to the railway company the land certificates, and in permitting them to be located and surveyed upon the lands in controversy, and returned to and filed in the General Land Office of the State, as well as the issuance of patents thereon, was had and done without authority of law and in plain violation of

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the Constitution and laws of the State in force at that time. It is finally alleged that, by reason of the unlawful acts of the company in obtaining and holding the certificates and in locating them upon the lands of the State, it holds out to the world that it has some kind of title to the lands, and a cloud is cast upon the title of the State thereto. The petition concludes with a prayer for judgment, for possession of and title to the lands, for a decree canceling each of the certificates and patents described and removing the cloud cast upon the title by the location and survey thereof, for damages, costs and general relief.

The first step taken by defendant in the cause was to file a petition to remove the cause to the United States Circuit Court for the Western District of Texas. We shall discuss hereafter the rights of defendant under this petition, which was accompanied by proper bond, etc. Suffice it to say, now, that the application to remove was denied, and the defendant company was compelled to proceed with the cause in the State Court. The defenses to the suit were then presented by a demurrer, plea and answer. The demurrer was a general one to the effect that the petition was wholly insufficient to show that the State was entitled to recover from

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the defendant in the manner and form as alleged. The plea averred that, on June 11, 1880, the defendant railway company, as party of the first part, made, executed and delivered to Andrew Pierce and George P. Stone, trustees, as parties of the second part, a second mortgage and deed of trust upon the main line of its railroad as then constructed from Harrisburg and Houston, in Harris County, to San Antonio, in Bexar County, in the State of Texas, a distance of about 225 miles, together with all the franchises and rights, so far as necessary to the proper enjoyment of the road between the points named, and also upon "all and singular the lands, locations, surveys, "land scrips and rights to lands that have been or "may be hereafter acquired by said party of the "first part for the construction of its main line of "railroad from Harrisburg and Houston to San "Antonio, by virtue of any general or special Acts "of the Legislature making donation of public "lands," etc.; that Andrew Pierce was dead and George F. Stone was sole surviving trustee under the mortgage; that said deed of trust was given to secure the second mortgage gold bonds of the defendant company in a series of 1,000 bonds of $1,000 each, numbered from 1 to 1,000,

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inclusive, which mortgages were and are still subsisting, outstanding and unpaid; that said defendant company was fully authorized by its charter and the laws of Texas to issue said bonds and to mortgage its land grants, as aforesaid, for the purpose of building, constructing and equipping its railroad; that said mortgage bonds constituted a lien upon the lands in controversy to such an extent and in such a way that any decree rendered in this cause would affect said bonds and security and the interests of the holders to such an extent that defendant believed, and so alleged, that the surviving trustee of the bonds was a necessary party to the cause; that said bonds, to the amount of one million dollars, were issued for valuable consideration, prior to the institution of this suit, under laws of Texas authorizing the same, and that all of said bonds were still outstanding and in the hands of *bona fide* holders for value; that said mortgage was duly recorded, prior to the institution of this suit, in the counties in which the lands in question are situated, giving constructive notice thereof to the world and particularly to the State. The defendant company, therefore, pleaded the non-joinder of George F. Stone, a necessary party to the cause, and prayed

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that the cause be abated unless the said Stone, as trustee as aforesaid, be made a party to the suit under proper terms to be prescribed by the Court.

After reservation of the benefits of the demurrer and plea the defendant answered, denying the allegations of the petition except as to special admissions. It admitted that it had received all the certificates described in plaintiff's petition, and admitted the correctness of the description therein contained. The answer then set up and pleaded defendant's legislative charter and its amendments, and the special and general laws under which it claims to be entitled to the land certificates and patents attacked; viz., the Act of February 11, 1850, incorporating the Buffalo Bayou, Brazos and Colorado Railroad Company, and the amendatory acts of January 31st, 1852, January 29th, 1853, and February 4th, 1854; the General Land Grant Act of January 30th, 1854, and the legislation extending its lifetime to ten years after November 13, 1866; the Act of July 27, 1870, changing the name of the railway company to the name it now bears, and conferring certain rights and imposing onerous burdens; the Act of March 10, 1875, extending the time for the completion of the road to San Antonio; Article 10, Section 6, of the

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State Constitution of 1869, and the amendment thereof, adopted March 19, 1873; the General Land Grant Act of August 16, 1876, and the repealing Act of April 22, 1882. We shall presently give the substance of the special and general laws and constitutional provisions affecting this case. The answer then averred that defendant was entitled to the lands, and to have title vested in it, for the following reasons: (1) Because it was entitled to said lands by force and virtue of its legislative charter and the amendments thereto and by virtue of the general laws pleaded, passed prior to the Constitution of 1869, and it averred that its rights thereunder were not intended to be affected and could not be affected or impaired by the prohibition contained in Article 10, Section 6, of the Constitution of 1869, the same being within the protection of Section 10, Article 1, of the Constitution of the United States and the Fourteenth Amendment thereof. (2) Because, were it otherwise, it was still entitled to said lands by virtue of the Act of the Legislature of July 27th, 1870, specially pleaded, and by virtue of the amendment of Article 10, Section 6, of the Constitution of 1869, voted in 1872, and approved March 19th, 1873, said constitutional

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amendment relating back as of the date of the adoption of the Constitution of 1869, and removing all constitutional inhibitions against legislative grants of land in aid of railroad companies, and giving full force and effect to the provisions of said Act of 1870 and prior legislation. (3) Because it was entitled to said lands by force and virtue of the provisions of Section 11 of said Act of July 27th, 1870, and by reason of the fact that, subsequently to the amendment to the Constitution made in 1873, the Legislature of the State of Texas proceeded to and did make numerous and specific grants of 16 sections of land per mile of completed road to other roads in this State, and defendant, relying upon said provision in its charter, commenced and continued the construction of its road thereafter in good faith and in reliance upon the recognition and performance on the part of the State of its obligation to accord to defendant equal rights with other roads in favor of which several land grants of 16 sections of land to the completed mile of road had been made. (4) Because, if it were not otherwise entitled thereto, it was entitled to have and to hold said lands by virtue of the provisions of the Act of August 15th, 1876, and by reason of the fact

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that, on the faith of and in reliance upon the provisions of said act, the defendant railway company constructed that portion of its road between San Antonia and El Paso, consisting of 623.14 miles, and it averred that it thereby became entitled to receive from the State 16 sections of land for each mile of said completed road, aggregating 6,380,953.6 acres, and that, if not otherwise entitled to the land sued for by the State, it was entitled to receive and hold the same as part of the land earned by it by the construction of its road as aforesaid between San Antonio and El Paso, which portion of its road was constructed subsequent to August 15th, 1876.

The answer further averred that the decisions of the Governor of the State of Texas, required as a prerequisite to the issuance of land certificates—that the defendant company had done all the necessary antecedent acts and performed all the conditions precedent to a right to receive said lands—were conclusive against the State, the Governor having been, by the various legislative acts before pleaded, constituted the sole and final judge whether or not such antecedent acts and conditions had been performed, and that the certificates of the Commissioner of the General Land Office and

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the surveys thereunder, pursuant to the findings and decisions of the Governor of the State, vested a full and perfect title to the lands in the defendant company. It was further set up and claimed that, by reason of the construction placed upon its charter and the general laws of the State by all the departments of the State Government, and by reason of the said grants of land, credit was given to the defendant company in the money markets of the world, and it was enabled to raise and procure money for the purpose of constructing and extending its railroad by the mortgage of the lands now sued for, which lands formed a most important element in the credit originally obtained by it in disposing of its bonds secured by deed of trust thereof; that during more than ten years the State and her officers stood by and allowed the assertion of title by the defendant company to said lands, whereby credit was obtained as aforesaid, and they were therefore estopped by laches from setting up any title thereto; that the demand of the State was a stale demand; and laches, stale demand and estoppel were specially pleaded in bar of the State's claim.

The defendant company further averred in its answer that, after the passage of the General Land

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Grant Act of August 16, 1876, which unquestionably conferred upon it a right to sixteen sections of land for each mile of road subsequently constructed, it undertook, in reliance upon the good faith of the State and in consideration of her promised aid, the costly enterprise of extending its railroad from San Antonio to El Paso in the State of Texas, a distance of over six hundred miles; that it had nearly completed its road for the entire distance and had earned the right to land certificates and patents for over six million acres of land, when, the work having been done and the benefits secured to the State, the Act of April 22, 1882, was passed by the Legislature of the State, repealing all land grants in aid of railroads; that, at the date of the passage of the Act of 1882, it had actually completed and had in running order enough miles of road, constructed subsequent to August 16, 1876, to entitle it to lands far exceeding in amount and value the lands claimed from it by the State; that the State, acting in the grossest bad faith and in utter disregard of the rights of the defendant company, refused to issue to it any land certificates or to recognize in any way its rights to the lands which it had earned by the construction of its road west of San Antonio as

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aforesaid, basing its refusal upon the repealing act of April, 1882. The answer charged that the Act of 1882 was unconstitutional, null and void, being violative of Section 10 of Article 1 of the Constitution of the United States, and of Section 1 of Article XIV. of the amendments thereof, because it impaired the obligations of the contract between the State and the defendant company, growing out of the offer of State aid in land held out in the Act of August 15, 1876, and the acceptance of that offer by the defendant and the construction of its railroad in reliance thereon, and because it divested the defendant company of its vested right to receive the land which it had earned by the construction of its road before the passage of the act. The rights of the defendant company growing out of the extension of its road to El Paso, under the circumstances above stated, and the conduct of the State in respect thereto, are set up in the answer both as an equitable defense to the State's demand and by way of counter-claim and set-off.

After the filing of the responsive pleadings of defendant in the Court below, the plaintiff State filed what is styled "Plaintiff's First Supplemental Petition." This pleading suggests, by way of ex-

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ception to certain portions of the answer and prayer to have the same stricken out, the position of the State in respect to the defenses set up in the answer, and it is unnecessary now to deal with it in detail. The State also pleads by way of estoppel the argument of a former attorney for the defendant company in a former litigation between the State and the company. This plea was excepted to in a supplemental answer. To avoid confusion we shall present a separate argument upon the plea of estoppel at the close of this brief.

The nature of this suit and the main issues involved may be briefly summarized as follows: The State seeks to recover lands granted to the railway company in consideration of the construction of its railroad. The grounds of recovery are that the State, acting through its Governor and its Land Department, made a mistake many years ago when it considered that the railway company was entitled, under its legislative charter and the amendments thereto and the general laws of the State on the subject, to receive the land certificates in question for the portion of the railroad concerned, namely, that portion lying between the Colorado and Guadalupe Rivers, constructed subsequent to the Constitution of 1869

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and prior to the last General Land Grant Act of August 15, 1876, because, it is claimed, whatever rights to State aid in land the railway company might have had under its charter or the general laws was destroyed by a provision of the Constitution of 1869, prohibiting, it is claimed, all land grants in aid of railroads. The railway company answers that, under its charter and the amendments thereto and the general laws, it had a contract right to receive the lands which it had earned by the construction of its railroad, and that, if it was intended by the prohibition in the Constitution of 1869 to destroy its right to the land grant, then that provision of the Constitution is violative of the Constitution of the United States and is null and void. As an additional muniment of title, it pleads, in the alternative, its supplemental legislative charter of July 27, 1870, especially Section 11 thereof, which conferred upon it the same rights to a land grant as might be provided for any other railroad in the State, and in this connection it sets up the prompt repeal of the constitutional prohibition of 1869, the granting to other railroads of lands at the rate of sixteen sections per mile, and the fact that the portion of

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its road for which the lands in controversy were received was not constructed until after the repeal of the prohibition against railroad land grants and after the granting of State aid in land by the Legislature to other railroads in the State. The answer also sets up an equitable defense founded upon the general principle that, when a State voluntarily comes into court, she subjects herself to the jurisdiction of the Court to the same extent as any ordinary litigant, at least so far as concerns any and all legal or equitable defenses to her claim, and she can obtain equitable relief only when entitled to it upon principles of equity and good conscience; that when she comes into a court of equity she must come with clean hands, when she seeks equity she must do equity, and she can never expect a court of conscience to grant her relief in respect to a demand which is contrary to equity and good conscience. Under this defense it is alleged that on August 16, 1876, the State passed an act to encourage the construction of railroads, and promised sixteen sections of land for each mile of road constructed under the conditions of the act; that the defendant railway company thereupon extended its road from San Antonio to El Paso at enormous cost, in the just

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expectation of the faithful performance by the State of her promised aid in land, and by the construction of its road to El Paso, in all respects in compliance with the requirements of the Act of 1876, the company earned and became entitled to receive land certificates and patents for over six million acres of land ; but that the State unjustly and illegally repudiated her obligations and refused to issue the land certificates or to recognize the right of the railway company to the lands it had earned, basing her refusal upon the repealing act of April 22, 1882, which we charge to be violative of the Constitution of the United States. Defendant in the court below charges that on a fair accounting the State would owe it over ten times as much land as she now seeks to recover, and that her conduct in seeking to take from it several hundred thousand acres of land, when she owes it as many millions, is grossly unjust, unfair and oppressive, and is contrary to equity and good conscience. On this branch of the defense we shall contend that, if it (the railway company) is not otherwise entitled to the lands in question, its rights and claims under the Act of August 16, 1876, should be considered by the Court—at least so far as they consti-

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tute an equitable defense--and enforced—at least so far as they afford ground for dismissing the suit of the State, or conditioning the relief accorded her upon her doing justice to the railway company, or for quieting it in the possession of the land it now has.

Before discussing the decisions rendered in this case by State Courts, we shall give the substance of the special and general laws and the Constitution of Texas, which are referred to in the pleadings, so far as they bear upon the case. They will be found printed in full in the appendix to this brief.

The Act of February 11th, 1850, incorporated the Buffalo Bayou, Brazos and Colorado Railroad Company, conferring upon it the usual franchises and powers of a railroad corporation. The Act of September 4th, 1850, legalized the organization of the corporation. The Act of January 31, 1852, amended the charter of the company in respect to matters not material to his litigation. The Act of January 29, 1853, defined the route of the railroad the company was authorized to construct, as follows: "Commencing at a suitable point on "Buffalo Bayou, in the County of Harris, and "thence running by such course, and to such point

" or points at or near the Brazos and Colorado Riv-
" ers, or across the same, as said company may deem
" advisable, with the privilege of making, owning
" and maintaining such branches to said road as
" they may deem expedient." This act also pro-
vided " that there shall be granted to said com-
" pany eight sections of land of six hundred and
" forty acres each for every mile of railway actu-
" ally completed and ready for use," and also pre-
scribed the formalities to be observed in order to
obtain land certificates as the road was con-
structed.

On January 30th, 1854, the Legislature passed a general land grant act, entitled " An Act to en-
" courage the construction of railroads in Texas by
" donation of lands," Section 1 of which provides
" that any railroad company chartered by the
" Legislature of this State, heretofore or hereafter
" constructing within the limits of Texas a section
" of twenty-five miles or more of railroad, shall be
" entitled to receive from the State a grant of 16
" sections of land for every mile of road so con-
" structed and put in running order." Railroads applying for land under this act were required by Section 3 to cause the land to be surveyed into sections of 640 acres each, and in square blocks of

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not less than six miles, unless prevented by previous surveys or a navigable stream, which survey should be delineated upon a map or maps, the even and odd sections being differently colored and regularly numbered from one upward to the full number contained in the block, and the field notes of the survey and map or maps should be deposited with the Commissioner of the General Land Office. Section 6 provides "that "any railroad company having completed and put "in running order a section of twenty-five miles or "more of its road may give notice of the same to "the Governor, whose duty it shall be to appoint "some skillful engineer, if there be no State Engi- "neer, to examine said section of road, and if, upon "the report of the said engineer, under oath, it "shall appear that said road has been constructed "in accordance with the provisions of its charter "and of the general laws of the State in force at the "time regulating railroads, thereupon it shall be "the duty of the Commissioner of the General Land "Office to issue to said company patents for the "odd sections surveyed in pursuance of the second "and third sections of this act; but in case said "lands, or any part thereof, shall not have been "surveyed at the time said section is completed,

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" then it shall be the duty of said Commissioner to " issue to said company certificates of 640 acres each, " equal to sixteen sections per mile of road so com- " pleted, whereupon said company may apply to the " district surveyor of any land district in this State to " survey any quantity of vacant land subject to loca- " tion and entry in said district, not to exceed twice " the quantity of certificates so issued, which cer- " tificates shall be made, numbered and colored as " directed in the third section of this act; and, upon " the return of the field notes and map or maps of " such surveys to the General Land Office and the " certificates so issued, it shall be the duty of the " Commissioner to issue to said company patents for " the odd sections of said surveys; provided that, in " case the surveys are not applied for before the " completion of any section of road, it shall not be " necessary to deposit with the treasurer a bond " as required in the second section of this act." Section 11 provides that all the alternate or even sections of land surveyed in pursuance to the provisions of this act shall be reserved to the use of the State and not liable to locations, entries or preemption privileges until otherwise provided by law. Section 12 provides, in effect, that the provisions of the act shall not entitle any railroad

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company, having a right to a land grant under its existing charter, to receive more than sixteen sections of land for one mile of completed road. It was further provided that the act should continue in force for ten years from the time it took effect, and no longer. On the same day, the general land grant act was amended by an act which provided that no railroad company benefited by the act should receive any donation of land under its charter, or under the act of which this is a supplement, for any work not done within ten years after the passage of the act.

By the Act of February 4, 1854, amending the charter of the Buffalo Bayou, Brazos and Colorado Railroad Company, it was provided that the company should be "entitled to all the rights, privi- " leges and benefits accruing from any general law " or laws that have or may be hereafter passed by " this State to encourage the construction of rail- " roads, in the same mannerand to the same extent " as if the gauge of said road was the same now " fixed, or which may be hereafter fixed, upon by " this State." On the same day another and a separate act was passed containing only two sections, of which the following is a copy:

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"SECTION 1. Be it enacted by the Legisla-
" ture of the State of Texas, that if the Buffalo
" Bayou, Brazos and Colorado Railroad Com-
" pany shall avail themselves of the act to
" which this is a supplement, or accept
" any donation of land from the State,
" they shall not be entitled to receive any
" such donation from the State under the
" provisions of this law or any law that has
" heretofore been passed for their benefit, for
" any portion of their road which shall not
" be completed and ready for use within ten
" years from and after the passage of this act;
" provided that said company shall restrict
" themselves to the following route; viz., to an
" extension of their existing road to Austin,
" in the County of Travis, crossing the Brazos
" River at any point between the Town of
" Richmond, in Fort Bend County, and Hi-
" dalgo, in Washington County, and with the
" right of extending their road from Austin
" to connect with any road running north of
" Austin towards the Pacific Ocean. Provided,
" such connections be made between the
" ninety-sixth and ninety-eighth parallels
" of longitude; and provided, further, that
" said company shall have no right to build
" branches from their main road.

"SECTION 2. This act shall take effect from
" and after its passage."

By an act approved January 11th, 1862, it was provided that the time of the continuance of the

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war between the Confederate States and the United States should not be computed against any internal improvement company in reckoning the period allowed them in their charters, by any law, general or special, for the completion of any work contracted by them to be done. By another act of the same date, entitled "An Act for the relief of railroad companies," it was provided that the failure of any chartered railroad company to complete any section, or fraction of section, of its road, as required by existing laws, should not operate as a forfeiture of its charter, or of the lands to which it would be entitled under the Act of January 30th, 1854, and the several acts supplementary thereto, provided it should complete such section, or fraction of section, as would entitle it to donations of land under existing laws within two years after the close of the war.

By a general act entitled "An Act for the bene-
"fit of railroad companies," approved November 13, 1866, it was, among other things, provided that "the grant of sixteen sections of land to the mile
" to railroad companies heretofore or hereafter con-
" structing railroads in Texas shall be extended,
" under the same restrictions and limitations hereto-

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" fore provided by law, for ten years after the pas-
" sage of this act."

Section 6, article X, of the Constitution of 1869, reads as follows:

> "The Legislature shall not hereafter grant
> " lands to any person or persons, nor shall
> " any certificates for land be sold at the Land
> " Office except to actual settlers upon the
> " same, and in lots not exceeding one hundred
> " and sixty acres.."

This Constitution of the State, adopted in 1869, and known as the "Constitution of 1869," took effect on the date of its acceptance by Congress, which was March 30, 1870, as decided in Grigsby vs. Peak, 57 Tex., 142, or on the date of its adoption, which was December 3, 1869, as subsequently decided in Peak vs. Swindell, 66 Tex., 242.

On the 27th day of July, 1870, the Legislature of the State of Texas passed an act entitled " An Act supplementary to the act to incorporate " the Buffalo Bayou, Brazos and Colorado Rail-" road Company, and of the other special acts " relating to said company." The preamble of this act, which recites important facts, is as follows:

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"Whereas, on the eleventh of July, 1868, "'the roadbed, track, franchise and chartered "'rights and privileges' of the Buffalo "Bayou, Brazos and Colorado Railroad Com- "pany were sold on executions, issued on "judgments against said company, and on the "twenty-fourth January, 1870, the railroad "of said company from Harrisburg to Alley- "ton, and its franchise, rights and other "property appertaining thereto, was sold "under the provisions of a mortgage or deed "of trust made by said company on the first "of November, 1860, all of which appears "of record; and, whereas, the Act of "December 19, 1857, 'supplementary to and "'amendatory of an act to regulate railroad "'companies,' provides that the purchasers at "such sales, and their associates, 'shall be en- "'titled to have and exercise all the powers, "'privileges and franchises granted to the "'company sold out by its charter, or by vir- "'tue of the general laws of this State;' and "'shall be deemed and taken to be the true "'owners of said the charter, and corporators "'under the same, and vested with all "'powers, rights, privileges and benefits "'thereof;' and, whereas, the purchasers at "said sales, and their associates, have formed "a new company under said old name, and "have expended large sums of money in the "construction of said railroad, in the pur- "chase and completion of the Columbus Tap "Railroad, and the bridge of the Brazos

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"Iron Bridge Company over the Brazos "River at Richmond; and, whereas, said new "company desires to be distinguished by "name from said 'sold-out' company, to "consolidate its property and to extend said "line of railroad."

Section 1 of the act provides:

"That the new company heretofore known "as the 'Buffalo, Bayou, Brazos and Colorado "'Railway Company,' referred to in the pre- "amble of this act, shall be hereafter known by "the corporate name of 'The Galveston, Har- "'risburg and San Antonio Railway Com- "'pany,' and may alter its seal to conform to "its name; provided, that said new company "shall be liable to the State of Texas for the "debt of said 'sold-out' company for loans "made to the latter company from the "special school fund, in the same manner "and to the same extent as said 'sold-out' "company was liable, and that said change "of name shall in no respect impair or affect "said liability or the existing lien or mortgage "of the State upon the railroad of said com- "pany as security for said loans. Also pro- "vided, that said change of name shall in no "respect impair or affect any of the obliga- "tions of said new company or other parties, "or the obligations of other parties to said "new company; all of which may be enforced "by or against said new company under said "new name."

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Section 3 of the act provides:

"That said new company is hereby authorized to extend the existing line of railroad owned and operated by said company, from Columbus, in Colorado County, to San Antonio, in the County of Bezar, within four years from the passage of this act, and thence to a terminus on the Rio Grande, by such route as the directors shall deem most feasible, with a branch from the most suitable point to New Braunfels, in Comal County, within four years from the passage of this act, or said new company may connect with any line of railroad that may be constructed or under construction to San Antonio or the Rio Grande, south of latitude of the City of Austin and the Colorado River instead of building, its own line beyond the point of such connections, and may build and connect with any line of railroad that may be constructed or under construction, and designed to form part of any railroad line to the Pacific, south of the thirty-fifth parallel of latitude; nothing herein being so construed as to exclude said new company from the right to construct; also any part of the line up the Colorado Valley formerly designated by said 'sold-out' company as its route under the provisions of the eleventh section of the Act of December 19th, 1857; provided, that if the said road shall not be completed within the time specified in this

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"section, then this charter shall be for-
"feited."

Section 8 provides:

"That in case it shall be made to ap-
"pear to the Governor that there has
"not been issued upon said railroad the
"full quantity of sixteen sections of land
"scrip for every mile of the same that
"was constructed and put in order prior to
"the war of the late rebellion, in accordance
"with the provisions of the charter and of
"the general laws of the State in force at
"the time regulating railroads, there shall be
"issued to said new company said scrip to
"the amount of any such deficiency, notwith-
"standing said railroad may not have been
"constructed and completed at the rate of
"twenty-five miles each year after the con-
"struction of the first twenty-five miles, as
"provided in the Act of January, 1854."

Sections 11 and 12 of the act read as follows:

"SECTION 11. That said new company
"shall be entitled to the same or simi-
"lar rights and relief, except State aid in
bonds "~~lands~~, or endorsement of or guarantee of in-
"terest on bonds granted to or provided for
"any other railroad company by the Legis-
"lature, and upon the same or similar terms
"and conditions so far as such rights and
"relief are, in their character, applicable to
"said new company or its lines of railroad.

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"SECTION 12. That nothing in this act shall "be so construed as to deprive any party in- "terested of the right to disprove any assumed "fact stated in the preamble; provided, that "nothing in this act contained shall be con- "strued as reviving or renewing any land "grant to said company for road hereafter to "be completed which it does not possess by "existing law."

Section 6 of Article X. of the Constitution of 1869, above quoted, was amended by resolution passed by the Legislature of Texas on May 17, 1871, and the amendment was adopted by a vote of the people of the State on the 5th, 6th, 7th and 8th days of November, 1872, and was ratified by the Legislature of March 19th, 1873. The amendment became effective on that date and removed the restriction imposed upon the granting of land in aid of railroads. The section, as amended, reads as follows:

"SECTION 6. The Legislature of the State of "Texas shall not hereafter grant lands, ex- "cept for purposes of internal improvement, "to any person or persons, nor shall any cer- "tificate for land be sold at the Land Office "except to actual settlers upon the same, "and in lots not exceeding one hundred and "sixty acres; provided, that the Legislature "shall not grant, out of the public domain,

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" more than twenty sections of land for each
" mile of completed work in aid of the con-
" struction of which land may be granted,
" and provided, further, that nothing in the
" foregoing proviso shall affect any rights
" granted or secured by laws passed prior to
" the final adoption of this amendment."

On August 16, 1876, the Legislature, under ample authority conferred by the Constitution of 1876, passed a general law entitled " An Act to " encourage the construction of railroads in Texas " by the donation of lands," whereby it was provided that any railroad theretofore chartered or which may be thereafter organized under the general laws of the State should, upon the completion of a section of ten miles or more of its road, be entitled to receive, and there was thereby granted to every such railroad company from the State, sixteen sections of land for every mile of its road so completed and put in running order. The act prescribed the usual formalities for ascertaining compliance on the part of railroad companies with the provisions of the act, the issuance of certificates, etc.

On April 22, 1882, the Legislature passed an act repealing all laws in force granting lands for the construction of railroads.

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There is a stipulation in the record to the effect that the charters and special laws relating to the defendant railway company and relating to grants of land to railroad companies may be used and considered in evidence, on any trial or hearing of the cause, as well as all special laws incorporating railroads and other laws, general and special, granting lands and land certificates for works of internal improvements (Printed Record, p. 93; See, also, Conclusions of Fact of the Court of Civil Appeals, Printed Record, p. 120); and Decision of State Supreme Court on Certified Questions, Printed Record, p. 112, and the case of G., H. & S. A. Ry. Co. vs. State, 81 Texas, 572, where this mode of making special legislation a part of the record was sanctioned.

The District Court overruled the demurrer and the plea of the defendant, and gave judgment on the merits in favor of the State, adjudging that the certificates and patents described in the petition had been issued without warrant or authority of law, and decreeing that they be canceled and held for naught, and that the cloud cast upon the title of the State to the lands located and surveyed thereunder be removed. From this judgment the defendant prayed and was allowed an appeal to

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the Court of Civil Appeals for the Fourth Supreme Judicial District of the State of Texas.

The Court of Civil Appeals found that there were certain issues of law involved in the case which it deemed advisable to present to the Supreme Court for adjudication, and, accordingly, the following questions were certified to that Court :

> " QUESTION 1. Did Section 6, Article 10, of " the Constitution of 1869 repeal all laws " giving railroad companies the right to earn " lands from the State by the construction of " railroads; and, if so, would this repeal " apply as well to the right to earn lands " given through charters as through general " laws? QUESTION 2. If the above be an- " swered in the negative, did appellant suc- " ceed to the rights of the Buffalo Bayou, " Brazos and Colorado Railroad Company by " virtue of the special Act of 1870, said Buf- " falo Bayou, Brazos and Colorado Railway " Company being restricted by special Act of " February 4th, 1854, to run its line to " Austin? QUESTION 3. If the laws as to " the land grants to railroads passed prior to " 1869 were repealed by the Constitution of " that year, can appellant interpose and " maintain in this suit the equitable defense " that, if the certificates issued for that por- " tion of the road between the Colorado and

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"Guadalupe Rivers from 1870 to 1876 were "illegally obtained, the State is in no "position to ask the relief sought by reason "of the fact that appellant has earned cer- "tificates for said 163 miles of road" [refer- "ring to the 163 miles from San Antonio "westward, begun, completed and in run- "ning order after the passage of the Act of "August 15, 1876, and before the attempted "repeal thereof on April 22, 1882]? "QUES- "TION 4. If the last question be affirmatively "answered, would the fact that, at the time "the land for the 163 miles west of San "Antonio was earned by appellant, the pub- "lic lands were exhausted affect the equities "of the case?" (Printed Record, p. 111.)

In answering these questions, the only information about the case which the Supreme Court had before it was the following brief statement of the case, which accompanied the certified questions:

"The State of Texas instituted suit "against appellant to cancel certain land cer- "tificates and patents issued by the State to "appellant for land, amounting to 879,- "078 $\frac{1}{2}\frac{1}{0}$ acres. It was alleged and proved "that the certificates and patents were issued "to the Galveston, Harrisburg and San An- "tonio Railway Company for a portion of its "railroad constructed between the Colorado "River and Guadalupe River, between the "time of the adoption of the Constitution of

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" 1869 and the passage of the Act of August
" 16th, 1876 (Acts 4267 to 4277, Rev.
" Stats.). On July 27, 1870, by special Act
" of the Legislature, appellant was chartered
" and recognized as the successor of the Buf-
" falo Bayou, Brazos and Colorado Railway
" Company. After the passage of the Act
" of August 16th, 1876, and before its repeal
" in 1882, appellant constructed about 163
" miles of railroad from San Antonio west-
" ward towards El Paso, for which the State
" refused to issue land certificates, the Gov-
" ernor refusing the application for inspec-
" tion, on May 22, 1882, on the ground that
" the law granting certificates has been re-
" pealed " (Printed Record, p. 110).

The answer of the Supreme Court to the certified questions will be found in the printed record, pages 111 to 117. The first question was not answered, the Court being of the opinion that its answer to the second question made an answer to the first unnecessary. In answering the second question, the Court said that it would consider the special laws relating to the defendant railway company as forming part of the record and properly before the Court. It was conceded in the opinion that the Buffalo Bayou, Brazos and Colorado Railroad Company was entitled under its special charter and the amendments thereto to

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the land grant provided by the general law of January 30, 1854; but that, until the passage of the special Act of July 27, 1870, it was subject to the restrictions with respect to its route imposed by the second special Act of February 4, 1854. It was also conceded that the general land grant law of January 30, 1854, was kept alive by the legislation of 1862, and was in force when the Act of November 13, 1866, extending it for ten years, was passed, and that the latter act had the effect to continue in force the Act of January 30, 1854, for ten years from November 13, 1866. The Court also conceded that the purchasers of the Buffalo Bayou, Brazos and Colorado Railway Company, who, by the special Act of July 27, 1870, were allowed a change of corporate name to that of the Galveston, Harrisburg and San Antonio Railway Company, acquired under the law all the rights, franchises, privileges, chartered powers, corporate existence, etc., of the "sold-out" company, including the right to a land grant. It was also conceded that it was perfectly competent for the Legislature in 1870 to authorize the change of route it did authorize, and to remove the restrictions as to route imposed by the second special Act of February 4, 1854, and "that, as long as the general law which

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" granted the privileges of acquiring land re-
" mained in force, and so long as no constitutional
" inhibition stood in the way, legislative authority
" to a company to change the line to be constructed
" should be construed to carry with it the privi-
" lege of earning lands for the construction of the
" new line." But the Court held that the prohibition in Section 6, Article 10, of the Constitution of 1869, blocked the way and defeated the right of the defendant railway company, which would otherwise have existed, to a land grant for its road constructed along the new route; and, in so holding, the Court gave effect to a provision of the State Constitution which, so far as it had such effect, defendant had specially set up and claimed to be in violation of the Constitution of the United States. As we shall endeavor to show hereafter, the railway company's right to receive a donation of land for the construction of the portion of its road in question owes its existence to legislation prior to the special Act of 1870, and to the Constitution of 1869. By merely authorizing an existing railroad corporation to build a branch line, or to extend its road, or to change its route, the Legislature cannot be said to thereby create anew all the corporate rights and franchises which the cor-

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poration, under its charter, may enjoy and exercise upon or in respect to the branch or extension or changed line. The original grant of the corporate rights and franchises necessarily included the right to enjoy them in respect to any physical property which the company might acquire under existing or future legislation. When a Legislature authorizes a pre-existing railroad company to build an extension or alter its route, all that company's corporate rights and franchises are extended to and operate upon the extension or changed line to the same extent as if it were a part of the original road, and this, not by force of the legislation authorizing the extension or altered route, but by reason of the pre-existence of those corporate rights and franchises, by force of the original grant which created them. Hence, their existence and enjoyment in reference to the new road is not affected by limitations upon the power of the Legislature at the time the extension or change of route was authorized. It follows from the foregoing that Section 6, Article 10, of the Constitution of 1869, as construed by the Supreme Court of Texas, abridged and impaired rights of a contract nature, to which the railway company was entitled under prior laws, and it is, therefore,

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violative of the contract clause of the Federal Constitution.

The Supreme Court disposed of the third question in a very summary manner, answering it in the negative. The information afforded it by the certified questions was so meagre that the Court naturally misapprehended the nature of the defense intended to be covered by the third question and disposed of it in a few lines. It held that the mere right to receive certificates for the additional road west of San Antonio, constructed under the Act of 1876, conferred no title to the lands in controversy, since they had not been surveyed or patented under any certificates granted for the additional road, and that it knew of no case "in "which it has ever been ruled that the claimant "of land against the State, under a location made "by virtue of a void certificate, has any equity in "the premises by reason of being the possessor of "another valid certificate" (Printed Record, p. 117). As the defense intended to be referred to in the third question involves a Federal question, we shall have occasion to present it more fully in another portion of this brief. Your Honors will then see how inadequately it was dealt with in the certified questions of the Court

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of Appeals and in the answer thereto of the Supreme Court. The third question not having been answered in the affirmative, no occasion for answering the fourth arose.

The case then went back to the Court of Civil Appeals. That Court rendered a decision which will be found on pages 119–130 of the printed record. For its conclusions of fact it adopted, with slight changes, the agreed statement of facts filed in the lower Court. In its opinion it gave a résumé of the petition and answer, and then briefly ruled upon the following matters of defense: First, the application to remove the cause to the Federal Court, which it held was properly denied upon the authority of State of Tennessee vs. Bank of Commerce, 152 U. S., 454; second, the plea of non-joinder of George F. Stone, trustee in the mortgage, which it held was properly overruled, on the ground that mortgagees are not necessary parties to actions of trespass to try title brought against mortgagors; third, the defense, founded on the effect by way of estoppel of the acts of the Governor and Land Department in issuing the certificates in question, which it decided against the railway company on the ground that the State cannot be estopped by the

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acts of any of its officers done in the exercise of a power not conferred upon them any more than it can be bound by contracts which they were not empowered to make. Having passed upon these matters of defense, the decision or opinion closes as follows:

> "The questions raised by the remaining
> " assignments of error have been certified
> " by this Court to the Supreme Court, and
> " have been answered adversely (G. H. &
> " S. A. Ry. Co. vs. The State of Texas,
> " opinion delivered March 19, 1896). In
> " that opinion it was held that appellant did
> " not succeed to the rights that would have
> " accrued to the Buffalo Bayou, Brazos and
> " Colorado Railroad had it been extended, as
> " provided by its charter, to Austin, and
> " that it was no defense to the action for the
> " recovery of the lands involved in this
> " suit that the company may have been
> " entitled to certificates for the 163 miles of
> " railroad constructed west of San Antonio
> " under the law of 1876."

The assignments of error referred to by the Court of Civil Appeals are eighteen in number and will be found on pages 104–108 of the printed record. A comparison of them with the certified questions and answers thereto will not support the statement of the Court of Appeals that all the

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questions presented by the assignments of error, except the three disposed of by that Court, have been answered by the Supreme Court. For instance, how could the Supreme Court, which could have no knowledge of the matters of controversy except from the certified questions, know that such a question as that raised in the seventh assignment of error (p. 106) had been raised by defendant. The defense based on Section 11 of the defendant's charter may not be well taken, and that provision of the special Act of 1870 may be a dead letter, but certain it is that neither the Supreme Court nor the Court of Civil Appeals have ever passed upon it. Like many other matters of defense, it was lost somewhere in carrying the case back and forth between the two courts.

After ineffectual attempts to secure a rehearing from the Court of Civil Appeals and a writ of error to that Court from the Supreme Court, the plaintiff in error, defendant in the court below, sued out a writ of error from this Court, which was allowed by the Presiding Justice of the Court of Civil Appeals. The errors assigned in support of this writ of error will be found on pages 165–169 of the printed record.

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They are as follows:

" FIRST.

" The court of civil appeals erred in over-
" ruling and holding not well taken appel-
" lant's first and second assignments of
" error, each of which complained, in effect,
" of the action and ruling of the district
" court of Brewster county in refusing ap-
" pellant's application to remove this cause
" into the circuit court of the United States,
" and in proceeding with this cause after the
" presentation of the petition and bond for
" such removal.

" SECOND.

" That said court of civil appeals erred in
" overruling and holding not well taken
" appellant's fifth assignment of error, and
" in deciding that the special acts of the
" legislature of the State of Texas approved
" February 11th, 1850; September 4th,
" 1850; January 29th, 1853; February 4th,
" 1854, and July 27th, 1870, chartering and
" amending the charter of plaintiff in error
" railway company, and the general acts of
" the legislature of the State of Texas ap-
" proved January 30th, 1854; January 11th,
" 1862, and November 13th, 1866, and the
" acceptance of said laws, and the construc-
" tion by plaintiff in error railway company
" at large expense of an important part of
" its line of railway prior to the adoption of

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" the constitution of Texas in 1869, and the
" completion of its entire line subsequently
" and in due time, did not constitute a valid
" contract between the State of Texas and
" said railway company, entitling said rail-
" way company and creating in it a vested
" right to lands granted by said laws and
" earned by said railway company there-
" under, including the lands involved in this
" suit, and in holding and deciding in effect
" that said contract could be and was im-
" paired, and the right of said railway com-
" pany to said land was divested by the
" constitution of Texas adopted in 1869,
" contrary to and in violation of the Consti-
" tution of the United States, and especially
" article 1, section X., thereof, and section 1,
" article XIV., of the amendments thereof.

"THIRD.

" The said court of civil appeals erred in
" not deciding that the special acts of the
" legislature of the State of Texas approved
" February 11th, 1850; September 4th,
" 1850; January 29th, 1853; February
" 4th, 1854, and July 27th, 1870, chartering
" and amending the charter of plaintiff in
" error railway company, and the general
" acts of the legislature of the State of
" Texas approved January 30th, 1854;
" January 11th, 1862, and November 13th,
" 1866, and the acceptance of said laws and
" the construction by plaintiff in error rail-

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" way company at large expense of an im-
" portant part of its line of railway prior to
" the adoption of the constitution of Texas
" in 1869, and the completion of its entire
" line subsequently and in due time consti-
" tuted a valid contract between the State of
" Texas and said railway company entitling
" said railway company and creating in it a
" vested right to the lands granted by said
" laws and earned by said railway company
" thereunder, including the lands involved
" in this suit, and in not holding and decid-
" ing in effect that said contract could not
" be, and was not impaired, and the right of
" said railway company to said land was not
" divested by the constitution of Texas
" adopted in 1869, and that in so far as said
" State constitution attempted to impair
" such contract and divest such right the
" same was and is contrary to and in violation
" of the Constitution of the United States,
" and especially article 1, section X. thereof,
" and section 1 of article XIV. of the
" amendments thereof, and therefore void.

" FOURTH.

" The said court of civil appeals erred in
" overruling and holding not well taken
" appellant's ninth assignment of error and
" in deciding that plaintiff in error railway
" company had not, under the general act of
" the legislature of the State of Texas ap-
" proved August 16th, 1876, by constructing

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" and completing its road between San An-
" tonio and El Paso, a distance of 623 miles,
" in consideration of the grant of sixteen
" sections of land made by said act for each
" mile of road so constructed, acquired a
" contract and vested right to and was en-
" titled to hold under the grant thus made
" the lands involved in this suit, which con-
" tract and vested right could not be im-
" paired or divested by the general act of
" the legislature of the State of Texas ap-
" proved April 22, 1882, and in not deciding
" that the last mentioned act which at-
" tempted to repeal the laws granting such
" lands to said railway company, was and is
" contrary to and in violation of the Consti-
" tution of the United States and especially
" article 1 of section X thereof and section 1
" of Article XIV or the amendments thereof,
" and could not, therefore, impair said com-
" pany's contract right or divest it of said
" lands.

" FIFTH.

" Said court of civil appeals erred in
" overruling and holding not well taken ap-
" pellant's tenth assignment of error and in
" deciding that plaintiff in error railway
" company had not, under the general act of
" the legislature of the State of Texas ap-
" proved August 16th, 1876, by constructing
" and completing its road between San An-
" tonio and El Paso, a distance of 623 miles,

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" in consideration of the grant of sixteen
" sections of land made by said act for each
" mile of road so constructed, acquired a con-
" tract and vested right to and was entitled
" to hold under the grant thus made the
" lands involved in this suit, which contract
" and vested right could not be impaired or
" divested by the general act of the legis-
" lature of the State of Texas approved
" April 22nd, 1882, and in not deciding that
" the last mentioned act, which attempted
" to repeal the laws granting such lands to
" said railway company, was and is contrary
" to and in violation of the constitution of
" the United States, and especially article 1
" of section X thereof and section 1 of article
" XIV of the amendments thereof, and could
" not, therefore, impair said company's con-
" tract right or divest it of said lands.

" SIXTH.

" Said court of civil appeals erred in over-
" ruling and holding not well taken appel-
" lant's eleventh assignment of error and in
" deciding that plaintiff in error railway
" company had not, under the general act of
" the legislature of the State of Texas ap-
" proved August 16th, 1876, by constructing
" and completing its road between San An-
" tonio and El Paso, a distance of 623 miles,
" in consideration of the grant of sixteen
" sections of land made by said act for each
" mile of road so constructed, acquired a

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" contract and vested right to and was en-
" titled to hold under the grant thus made
" involved in this suit, which contract and
" vested right could not be impaired or
" divested by the general act of the legis-
" lature of the State of Texas, approved
" April 22nd, 1882, and in not deciding that
" the last mentioned act which attempted to
" repeal the laws granting such land to said
" railway company was and is contrary to
" and in violation of the Constitution of the
" United States, and especially article 1 of
" section X thereof and section 1 of article
" XIV of the amendments thereof, and could
" not, therefore, impair said company's con-
" tract right or divest it of said lands.

" SEVENTH.

" Said court of civil appeals erred in over-
" ruling and holding not well taken appel-
" lant's thirteenth assignment of error and in
" deciding that plaintiff in error railway com-
" pany had not, under the general act of the
" legislature of the State of Texas approved
" August 16th, 1876, by constructing and
" completing its road between San Antonio
" and El Paso, a distance of 623 miles, in
" consideration of the grant of sixteen sec-
" tions of land made by said act for each
" mile of road so constructed, acquired a
" contract and vested right to and was en-
" titled to hold under the grant made the
" lands involved in this suit, which contract

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" and vested right could not be impaired or
" divested by the general act of the legis-
" lature of the State of Texas, approved
" April 22, 1882, and in not deciding that
" the last-mentioned act which attempted to
" repeal the laws granting such lands to said
" railway company was and is contrary to
" and in violation of the Constitution of the
" United States, and especially article 1 of
" section X thereof and section 1 of article
" XIV of the amendments thereof, and could
" not, therefore, impair said company's con-
" tract right or divest it of said lands.

" EIGHTH.

" Said court of civil appeals erred in
" overruling and holding not well taken appel-
" lant's fourteenth assignment of error and
" in deciding that plaintiff in error railway
" company had not, under the general act of
" the legislature of the State of Texas ap-
" proved August 16th, 1876, by constructing
" and completing its road between San An-
" tonio and El Paso, a distance of 623 miles,
" in consideration of the grant of sixteen
" sections of land made by said act for each
" mile of road so constructed, acquired a
" contract and vested right to and was en-
" titled to hold under the grant thus made
" the lands involved in this suit, which con-
" tract and vested right could not be im-
" paired or divested by the general act of
" the legislature of the State of Texas ap-

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" proved April 22, 1882, and in not decid-
" ing that the last-mentioned act, which
" attempted to repeal the laws granting
" such lands to said railway company,
" was and is contrary to and in violation of
" the Constitution of the United States, and
" especially of article 1 of section X thereof
" and section 1 of article XIV of the amend-
" ments thereof, and could not, therefore,
" impair said company's contract right or
" divest it of said lands.

" NINTH.

" Said court of civil appeals erred in
" overruling and holding not well taken
" appellant's fifteenth assignment of error
" and in deciding that plaintiff in error rail-
" way company had not, under the general
" act of the legislature of the State of Texas
" approved August 16th, 1876, by construct-
" ing and completing its road between San
" Antonio and El Paso, a distance of 623
" miles, in consideration of the grant of six-
" teen sections of land made by said act for
" each mile of road so constructed, acquired
" a contract and vested right to and was
" entitled to hold under the grant thus made
" the lands involved in this suit, which con-
" tract and vested right could not be im-
" paired or divested by the general act of
" the legislature of the State of Texas ap-
" proved April 22, 1882, and in not decid-
" ing that the last-mentioned act, which

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" attempted to repeal the laws granting such
" lands to said railway company, was and is
" contrary to and in violation of the Consti-
" tution of the United States, and especially
" article 1, section X, and section 1 of article
" XIV of the amendments thereof, and could
" not, therefore, impair such company's con-
" tract right or divest it of said lands.

"TENTH.

"Said court of civil appeals erred in
" overruling and holding not well taken
" appellant's seventeenth assignment of error
" and in deciding that plaintiff in error rail-
" way company had not, under the general
" act of the legislature of the State of Texas
" approved August 16th, 1876, by construct-
" ing and completing its road between San
" Antonio and El Paso, a distance of 623
" miles, in consideration of the grant of six-
" teen sections of land made by said act for
" each mile of road so constructed, acquired
" a contract and vested right to and was en-
" titled to hold under the grant thus made
" the lands involved in this suit, which con-
" tract and vested right could not be im-
" paired or divested by the general act of
" the legislature of the State of Texas ap-
" proved April 22, 1882, and in not deciding
" that the last-mentioned act, which at-
" tempted to repeal the laws granting such
" lands to said railway company was and is
" contrary to and in violation of the Consti-

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" tution of the United States, and especially " article 1 of section X thereof, and section 1 " of article XIV of the amendments thereof, " and could not, therefore, impair said com- " pany's contract right or divest it of said " lands.

" ELEVENTH.

" Said court of civil appeals erred in hold- " ing and deciding that plaintiff in error " railway company had not, under the gen- " eral act of the legislature of the State of " Texas, approved August 16th, 1876, by " constructing its road between San Antonio " and El Paso, a distance of 623 miles, in " consideration of the grant of sixteen sec- " tions of land made by said act for each " mile of road so constructed, acquired a con- " tract and vested right to and was entitled " to hold under the grant thus made the " lands involved in this suit, which contract " and vested right could not be impaired or " divested by the general act of the legis- " lature of the State of Texas approved " April 22, 1882, and in not deciding that " the last-mentioned act, which attempted to " repeal the laws granting such lands to said " railway company, was and is contrary to " and in violation of the Constitution of the " United States, and especially of article 1 " of section X thereof and section 1 of ar- " ticle XIV of the amendments thereof, and " could not, therefore, impair said com-

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" pany's contract right or divest it of said
" lands.

" TWELFTH.

" Said court of civil appeals erred in affirm-
" ing the judgment of the district court in
" and for Brewster county, whereby the
" State of Texas had and recovered the said
" lands from plaintiff in error, and in not
" reversing the said judgment."

In the argument which is to follow, assignments of errors Second and Third, which present different views of the same question, will be discussed together under heading I of the argument; assignments Fourth to Eleventh, inclusive, will be argued together under heading II, and the First assignment will be discussed under heading III. The First assignment of error, relating to the right to remove, will be presented out of its logical order, because a decision of that question requires a familiarity with the whole case, and can be more conveniently considered after the nature of the case has been fully shown by the argument upon the merits. In the argument of the branch of the case embraced by assignments Fourth to Eleventh, inclusive, will be found a full statement of the errors assigned

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in the State Court to which the assignments Fourth to Eleventh refer.

The errors relied on, other than the denial of the right to remove, may be summarized as follows:

1. Under its legislative charter and its amendments and the general laws, prior to 1869, plaintiff in error had a vested and a contract right to receive and hold the lands in question, and the State court erred in not so holding and in not holding that section 6 of Article X of the Constitution of the State of Texas of 1869, in so far as it could be construed as divesting or withdrawing or impairing or abridging plaintiff in error's right to the lands in controversy, was in violation of section 10 of Article I of the Constitution of the United States and of section 1 of the Fourteenth Amendment thereof.

2. The State court erred in not deciding that, after plaintiff in error had accepted the offer of State aid in land held out in the general act of August 15, 1876, and had manifested its acceptance by undertaking and constructing its six hundred miles of road between San Antonio and El Paso, it had earned a vested and contract right to receive the promised sixteen sections of

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land for each mile of road constructed, protected from divestiture or impairment by the federal constitution, and in not deciding that the repealing act of April 22, 1882, was null and void, because in violation of section 10 of article 1 of the Constitution of the United States and of section 1 of the Fourteenth Amendment thereof. In refusing to declare the unconstitutionality and nullity of the act of April 22, 1882, and in refusing to recognize the vested and contract nature of plaintiff in error's right to receive the land certificates to which it was entitled under the act of August 15, 1876, and in treating plaintiff in error's right to lands under the act of 1876 as too inchoate and imperfect to support the equitable defense based thereon, the State court gave effect to the act of April 22, 1882, inasmuch as that act, by preventing the governor and land department of the State from recognizing the railway company's rights in the premises, was alone responsible for any want of completeness in the title, or in the evidence of the title of the plaintiff in error to the lands withheld from it by the State. A correct decision of this federal question—*i. e.*, the unconstitutionality of the act of April 22, 1882, and the want of right in the State to avail

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itself of the incompleteness in the title or in the evidence of the title of plaintiff in error to the lands directly due to this unconstitutional act, is essential to a fair and correct appreciation of the equitable defense discussed, in connection with the federal question, under heading II of the argument.

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ARGUMENT.

I.

SECTION 6 OF ARTICLE 10 OF THE CONSTITUTION OF 1869, AS CONSTRUED BY THE STATE COURT, ABRIDGES AND IMPAIRS CONTRACT RIGHTS AND DIVESTS VESTED RIGHTS OF THE GALVESTON, HARRISBURG AND SAN ANTIONIO RAILWAY COMPANY TO WHICH THAT COMPANY WAS ENTITLED UNDER GENERAL AND SPECIAL LAWS OF THE STATE OF TEXAS PASSED PRIOR TO 1869. HENCE, THE CONSTITUTIONAL PROVISION IN QUESTION VIOLATES SECTION 10 OF ARTICLE I. OF THE CONSTITUTION OF THE UNITED STATES, AND SECTION 1 OF THE FOURTEENTH AMENDMENT THEREOF.

The usual order of argument in a case of this kind is to establish first the existence of the Federal question, and to then show that it was erroneously decided by the State Court, and that there are no other questions in the case, independent of the Federal question, which will justify and sustain the judgment complained of. But the nature of this branch of the case is such that the existence of the Federal question, the erroneous decision thereof by the State Court, and the controlling in-

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fluence of that error upon the whole case, can be more conveniently presented and discussed together. The argument which establishes the existence of the Federal question must necessarily show at the same time that it was wrongly decided, and that a correct decision would amount to a reversal of the judgment before the Court for review. We shall discuss this branch of the case under the following headings: (1) The Buffalo Bayou, Brazos and Colorado Railway Company had a right, under its charter and the amendments thereto and the general laws passed prior to 1869, to a land grant of sixteen sections for each mile of road constructed. It was subject, however, to a certain restriction as to route. (2) That right, together with all the other franchises, privileges, etc., of that company, passed, through the purchasers thereof at a foreclosure sale, to the Galveston, Harrisburg and San Antonio Railway Company. (3) When the restriction as to route was removed and a new route or extension was authorized by the special Act of July 27, 1870, it was not necessary for that act to regrant the land grant or to recreate the other corporate rights and franchises in order that they might be exercised upon or in respect to the changed route or exten-

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sion. They accompanied and became attached to the changed route or extension as already existing rights, creatures of the laws which first called them into being and unaffected by the limitations upon the powers of the Legislature which changed the line of the railroad. (4) The right to a land grant was a contract right and a vested right, protected by the Federal Constitution from impairment or abridgment or divestiture by any subsequent law of the State, constitutional or statutory. (5) Section 6 of Article 10 of the Constitution of 1869, having been construed by the State Court as defeating the right which the plaintiff in error would otherwise have to a land grant in respect of the changed route or extension, abridges and impairs charter rights and privileges in the nature of contract and vested rights, within the prohibition of the Federal Constitution.

(1) *The Buffalo Bayou, Brazos and Colorado Railway Company had a right under its charter and the amendments thereto, passed prior to* 1869, *to a land grant of sixteen sections for each mile of road constructed. It was subject, however, to a certain restriction as to route.*

The correctness of this proposition will hardly be questioned. It was conceded by the State

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Supreme Court in its answers to the certified questions for the Court of Civil Appeals. The first special Act of February 4, 1854, unequivocally granted to the company all the rights, privileges and benefits accruing from any general law or laws that had been or might thereafter be passed by the State to encourage the construction of railroads. The general Act of January 30, 1854, was such a law and conferred the right to sixteen sections of land for each mile of constructed road. The State Court also conceded that the legislation of 1862 and the Act of November 13, 1866, had the effect of extending the lifetime of the Act of January 30, 1854, for ten years from November 13, 1866. This was not a very liberal concession, for the efficacy of those laws in keeping in force the general land grant act had been expressly recognized and declared by this Court in the case of *Davis vs. Gray*, 16 Wall., 203, and by the State Supreme Court in the case of *Railroad Co. vs. Knechler*, 26 Tex., 382. It is true that an independent act, the second special Act of February 4, 1854, imposed a restriction as to the route of the extension of the company's railroad which, until removed by competent legislative authority, curtailed the en-

joyment of the right or franchise of a land grant. But when once this restriction was removed the right to a land grant needed no additional legislation to give it force and effect in respect to any railroad which the corporation was authorized to construct under its charter or any future amendment thereof.

(2) *The right to a land grant, together with all the other corporate franchises, privileges, etc., of the Buffalo Bayou, Brazos and Colorado Railway Company, passed, through the purchasers at a foreclosure sale, to the Galveston, Harrisburg and San Antonio Railway Company.*

There is no doubt about the correctness of this proposition. The preamble to the special Act of July 27, 1870, quoted above in the statement of this case, recites the sale under foreclosure, on July 11, 1868, of the roadbed, track, franchise and charter rights and privileges of the old company; the right of the purchasers under the law of December 19, 1857, to have and exercise all the powers, privileges and franchises granted to the sold-out company by its charter or by virtue of the general laws of the State, and to be deemed and taken to be the true owners of said charter,

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and corporators under the same, and vested with all powers, rights, privileges and benefits thereof; the formation by the purchasers of a new company under the old name; the expenditure by them of large sums of money in the reconstruction of the railroad and in the acquisition of other property, and their desire to be distinguished by name from the "sold out" company; to consolidate its property and to extend the said line of railroad. Section 5 of the Act of December 19, 1857 (Art. 4260 of the Revised Statutes of 1879), referred to in the preamble, reads as follows:

"SECTION 5. The roadbed, track, franchise "and chartered rights and privileges of any "railroad company in this State shall be sub- "ject to the payment of the debts and legal "liabilities of said company, and may be sold "in satisfaction of the same; but the said "roadbed, track, franchise and chartered "powers and privileges shall be deemed an "entire thing, and must be sold as such; and "in case of the sale of the same, whether by "virtue of an execution, order of sale, deed "of trust, or any other power, the purchaser "or purchasers at such sale, and their asso- "ciates, shall be entitled to have and exercise "all the powers, privileges and franchises "granted to said company by its charter, or

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" by virtue of the general laws of this State;
" and the said purchaser or purchasers and
" their associates shall be deemed and taken
" to be the true owners of said charter, and
" corporators under the same, and vested
" with all the powers, rights, privileges and
" benefits thereof, in the same manner and to
" the same extent as if they were the orig-
" inal corporators of said company; and shall
" have power to construct, complete, equip
" and work the road upon the same terms
" and under the same conditions and restric-
" tions as are imposed by their charter and
" the general laws of this State" (General Laws, 1857, p. 26).

The Galveston, Harrisburg and San Antonio Railway Company is but the Buffalo Bayou, Brazos and Colorado Railway Company under another name, with the additional rights and burdens granted by the Act of July 27, 1870. There was no break in the continuity of corporate existence; the *corporation* itself passed to the purchasers at the sale. No further legislation was necessary to authorize the purchasers to exercise all the functions and enjoy all the rights and privileges of the sold-out company (H. & T. C. R. Co. vs. Shirley, 54 Tex., 125, 138). If a new corporation were to be brought into existence, legislation would have been necessary, for corporations

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could then be created in the State of Texas in no other way. But an examination of the provisions of the Act of July 27, 1870, makes it manifest that the Legislature was not creating a new corporation and conferring upon it the corporate powers it was to exercise. The act did not confer even the rights and franchises essential to the existence of a corporation and to owning and operating a railroad; it simply supplemented an existing charter. As was said by the Court in G. C. & S. F. R. Co. vs. Newell, 73 Tex., 335, 338, referring to Section 5 of the Act of December 19, 1857:

> "By the sale made by the Sheriff there "was a change made in the ownership of the "Central and Montgomery Railroad, and of "its franchises, but the corporate existence "continues with franchises neither enlarged "nor restricted, as before. A railway com- "pany, in whomsoever may be its ownership, "stands charged with every duty and obliga- "tion to the public imposed upon it by its "charter and the nature of its business, and "from those it cannot escape without legisla- "tive permission so long as its corporate ex- "istence continues."

It is perfectly clear, therefore, that plaintiff in error is in effect the same corporation as once existed under the name of the Buffalo Bayou, Brazos

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and Colorado Railway Company, subject to the changes that may have been wrought by subsequent legislation; and that as such it is entitled to the rights of that company under its charter and the acts relating to it, and under the general laws of the State, to the same extent as if there had never been any sale of the rights and franchises of that company, or any changes in its ownership. No new corporation was created by the special Act of July 27, 1870. That act merely changed the name of plaintiff in error, removed the restriction respecting its route via Austin, imposed by the special Act of February 4th, 1854; and made other regulations in reference to the corporation which need not be further considered here. It remained the same corporation, with all the rights conferred by its original charter and amendments of the same; and there was no attempt by said act to deprive it of the land grant to which it was entitled under the Act of January 30th, 1854. It was one of the railroad companies for whose benefit that law was passed. That grant was a right or franchise conferred upon it. Other corporations thereafter created might construct more roads from the Gulf Coast in a westerly direction, and accomplish, even more perfectly, the objects

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sought by the passage of that act, and yet would not be entitled to any of the lands thereby granted, because not contemplated by or coming within the act. It was a right or franchise peculiar to plaintiff in error and other companies theretofore chartered for the construction of roads westward from Buffalo Bayou or the Gulf Coast. This right to sixteen sections of land for each mile of road constructed by it, existing by reason of the fact that it had been chartered prior to January 30th, 1854, was as much a franchise of the Buffalo Bayou, Brazos and Colorado Railway Company, which passed to the purchasers at the sale in question, as was the right to construct and operate its railroad. It was a right which the Legislature had the power to renew and extend beyond the time originally fixed for its expiration. It was a right which the Legislature could confer, as it did by special acts in many instances, upon other corporations not coming within its terms originally, and under such restrictions as the Legislature saw proper to impose.

We understand the State Supreme Court, in its opinion, to assume that plaintiff in error has all the rights and powers conferred by charter or other law on the Buffalo Bayou, Brazos and Colo-

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rado Railway Company, and that the corporations are identical; but we emphasize it here because it is a consideration which should be fully appreciated in passing upon other questions involved in this case.

(3) *When the restriction as to route was removed and a new route or extension was authorized by the special Act of July* 27, 1870, *it was not necessary for that act to regrant the land grant or to recreate the other corporate rights and franchises, in order that they might be exercised upon or in respect to the changed route or extension. They accompanied and became attached to the changed route or extension as already existing rights, creatures of the laws which first called them into being, and unaffected by the limitations upon the powers of the Legislature which changed the line of the railroad.*

The right to a land grant, such as is claimed for plaintiff in error, belongs to the generic class of corporate franchises. In the case of *Davis vs. Gray*, 16 Wall., 203, a similar right was considered and treated as one of the franchises of a railroad corporation (see, also, *Railroad Co. vs. Georgia*, 98 U. S., 365). And in the case of *The State vs. Minn Central R. R. Co.*, 36 Minn., p.

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259, the Court, in speaking of a right to a land grant, said: "The right to acquire and dispose of "these lands and the right to hold the same in the "meantime exempt from taxation are corporate "*franchises*, but auxiliary and subordinate to the "main purpose and object for which the com- "panies were chartered."

Our contention is that, while the Act of July 27, 1870, had an indirect effect upon the then existing right to a land grant, inasmuch as it repealed the supplemental Act of February 4, 1854, restricting the route to Austin and authorized the extension of the road from Columbus to San Antonio and thence westward, it did not thereby create the land grant under which plaintiff in error received the land certificates in controversy, issued to it for the construction of a portion of its road between the points above named. That grant already existed and was one of the corporate franchises which the purchasers of the Buffalo Bayou, Brazos and Colorado Railway Company acquired, and which they transmitted to the reorganized company. It was one of the attributes of the corporation, a part of its corporate powers and privileges, which attached to and was exercisable upon every mile of road it might construct under com-

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petent legislative authority. It needed no additional legislation to give it life and being. The only restriction upon its exercise was of a kind which might be removed by future legislation, and, when removed, no further grant was necessary to give it full force and effect. While the State Supreme Court, in its opinion upon the certified questions, practically conceded that legislative authority to a company to change its line carried with it, without additional grant, the privilege of earning lands for the construction of the new line, yet the theory upon which its decision rests was that, as the right to build from Columbus to San Antonio was conferred by the Act of July 27, 1870, so the right to receive a donation of land for that portion of the road, if it existed, must be derived from the same act; that, as it was beyond the power of the Legislature in 1870 to confer upon any railroad company a right to a donation of land from the State, the plaintiff in error's supposed right to receive the certificates attached was without legal existence. In this way the Court gave effect to the prohibition against land grants in the Constitution of 1869, construing it so as to make it

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destructive of one of the most valuable charter rights and privileges of the plaintiff in error.

Our reply to this position of the State Court is that the Act of July 27, 1870, simply authorized an extension of the road towards San Antonio, thereby changing the route and repealing the prior law which had restricted it to another direction, and against such legislation there is no constitutional prohibition. Plaintiff in error's right to receive a donation of land for the construction of this part of its road owes its existence to legislation prior to the Act of 1870 and the Constitution of 1869. By merely authorizing an existing corporation to extend its road or build a branch line, the Legislature cannot be said to thereby create anew all the corporate rights and franchises which the corporation, under its charter, may enjoy or exercise upon or in respect to the extension or branch. The original grant of the corporate rights and franchises necessarily involved the right to enjoy them in respect to any physical property which the company might acquire under existing or future legislation. Legislation creating a land grant right is one thing, and legislation dealing with an existing land grant right and affecting merely the location of the physical property with

respect to which the right is to be exercised, is another and quite a different thing.

The State Court fails to distinguish between the railway company, with its corporate rights and franchises, and its physical railway. Yet there is a fundamental distinction between the two which has been frequently recognized. The text-books on taxation make us familiar with the difference between the corporate rights and franchises, and the physical tangible property upon or in respect to which they are exercised. The distinction is seen again in cases construing the effect of the constitutional prohibition against special legislation creating railroad corporations or conferring corporate rights and franchises, upon an act of the Legislature authorizing a certain railroad to change its route, or acquire the road of another company, or, what is the same in principle, to extend its own road in a direction not originally authorized. The cases sustaining such legislation are absolutely opposed to the proposition advanced on behalf of the State, that where a Legislature authorizes an existing corporation to extend its road, no right or franchise can be exercised or enjoyed in respect to the extension which it was not in the power of

the Legislature to confer at the time it authorized the extension.

The Constitution of Alabama declared that corporations should not be created by special act. The Legislature passed a special act authorizing an existing railroad corporation to change its name and to purchase the property of another company, and, necessarily, to exercise and enjoy, in respect to the authorized addition to its property, the corporate rights and franchises which had been conferred by a prior act of the Legislature, and which, at the time of the act in question, it would have been unconstitutional for the Legislature to create by special act. The Supreme Court of the United States said:

> "We are unable to see anything in this "legislation repugnant to the constitutional "provision referred to. That provision can- "not, surely, be construed to prohibit the "Legislature from changing the name of a "corporation, or from giving it power to "purchase additional property, and this was "all that it did in this case. No new corpo- "rate powers or franchises were created"
> Wallis vs. Loomis, 97 U. S., 146, 154.

So, in Southern Pacific Co. vs. Orton, 6 Sawyer (C. C.), 157, the Court considered the effect of a

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similar provision in the Constitution of California, upon a special act giving authority to the Southern Pacific Railroad Company to change the line of its road. The special act was held to be valid on the ground that it was not an act creating a corporation, in whole or in part, and did not involve the creation of any new corporate powers.

The distinction we are discussing was forcibly pointed out in the case of Cheraw and Salisbury R. R. Co. vs. Commissioners of Anson, 88 N. C., 519 (17 Am. & Eng. R. R. Cas., p. 434), where it was claimed that an exemption from taxation granted in the original charter of a railroad did not extend to a change of route authorized by a subsequent law. The Court said:

> "But the defendant contends that the "changes produced by subsequent legisla- "tion are so fundamental as to have de- "stroyed the identity of the corporation, as "first formed, and substituted a new corpo- "rate organization in its place, to which the "exemption has not been transferred.
>
> "In order to a satisfactory solution of the "question thus presented, we have examined "the series of acts of the General Assembly "relating to the company, and recited the "substantial provisions contained in each, "and, in our opinion, the defense finds no "support in any of them.

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"The fallacy of the argument for the "alleged organic change consists, as was "properly urged in the argument for the "plaintiff, in the failure to distinguish be- "tween the railroad, the constructed work of "the company, and the company itself. "Variations in the route over which the "company may run do not affect the identity "of the corporate body that builds it.

"Every one of the successive acts, after "the grant of the charter, professes in its "title to be amendatory only, and in its pro- "visions is in fact amendatory of the orig- "inal. The modifications, in some particu- "lars, are but recognitions of the undisturbed "stability of the others. None of them touch "the vital parts or impair the integrity of "the organic body as it existed at its forma- "tion. It is the same company executing its "undertaken purpose to push forward its "track into the interior portion of the State, "deflecting from the line first projected only "with the permission of the power that gave "it being and conferred its rights, and stop- "ping short of its distant terminus for want "of means to continue the work. * * *

"There are abundant precedents, if any "are now needed, to sustain this view. The "name and termini of the railroad, author- "ized in the charter granted to the Wilming- "ton and Raleigh Railroad Company, were "subsequently changed and a part of the "line lopped off; and yet, when the exemp-

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" tion contained in the charter was claimed
" and allowed, it was not suggested that
" amendments had abridged the rights of the
" Company in this regard (Wilmington &
" Weldon Railroad Company vs. Reid, 13
" Wall., 264).

" The very point has been determined at
" the last term in a case much stronger
" in the alterations of the charter, and, indeed,
" where a new company was formed, and yet
" was held to possess unimpaired the same
" right to a limited exemption from public
" taxes (Railroad Co. vs. Courts of Meck-
" lenburg, 87 N. C., 129)."

The right to receive State aid in land is a corporate franchise much less strictly construed than the corporate franchise of exemption from taxation. If, as we have seen, the corporate franchise of exemption from taxation extends to an extension or change of route authorized by Legislation, subsequent to that creating the exemption from taxation, and needed not to be renewed by the legislature when it authorized the extension or change of route, why may not the corporate franchise of a land grant in like manner extend to a change of route or extension without necessity of being granted anew in respect to the extended road? The corporate franchises and powers of a

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railroad company, chartered by special act of the Legislature, are of the same nature as the land-grant franchise we are now considering. If, as we have seen, the corporate rights and franchises created by a special act of the Legislature extend to and may be exercised in respect to an extension or branch authorized by legislation, passed at a time when there is a constitutional inhibition against the creation by special act of a corporation or of corporate rights and franchises, why may not the corporate franchise of State aid in land be exercised and enjoyed in respect to an extension, although authorized at a time when the Constitution prohibited the passage of laws granting land to any person or persons ?

In Southern Pacific Co. vs. Orton, *supra*, Judge SAWYER said that a legislative authority given to a railroad company to change its line does not involve the creation of any new corporate powers. The Supreme Court of North Carolina says (Cheraw & Co. vs. Commissioners, *supra*) that " variations in the route over which the com-" pany may run do not affect the identity of the " corporate body that builds it." The Supreme Court of the United States said in Wallace vs. Loomis, quoted above, speaking of the extension

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of an existing railroad which the Legislature had authorized by permitting the purchase of another railroad, that thereby "no new corporate powers "or franchises were created."

Do not all these authorities declare that, when the Legislature authorizes a pre-existing railroad company to build an extension, all that company's corporate rights and franchises are extended to, and operate upon, the extension to the same extent as if it were part of the original road, and this, not by force of the Legislature authorizing the extension, but by reason of the pre-existence of those corporate rights and franchises, by force of the original grant which created them. Hence, their existence and enjoyment in reference to the extension is not affected by limitations upon the power of the Legislature at the time the extension or change of route was authorized.

Section 12 of the special Act of July 27, 1870, contains the proviso "that nothing in this act con-"tained shall be construed as reviving or renew-"ing any land grant to said company for road "hereafter to be completed which it does not "possess by existing law." There is nothing in this proviso inconsistent with our contention that the right of plaintiff in error to receive the lands

in controversy antedated the Act of 1870, and was not intended to be created or destroyed by the provisions of that act. The words "reviving "or renewing any land grant" are applicable only to a case where a land grant has been lost by forfeiture or lapse of time or in some other way, and it is not pretended that the land grant claimed by plaintiff in error stands in need of any revivor or renewal. In the light of the history of the the times, which may be seen in the decision in the case of *Railroad Compy. vs. Kuechler*, 36 Tex., 382, and *Davis vs. Gray*, 16 Wall., 203, the meaning of Section 12 becomes clear.

The Act of 1870 was passed a short time after the Constitution of 1869 was ratified by Congress. The then Attorney-General of the State, and, probably, the Governor, had construed Section 6 of Article 10 of the Constitution as repealing or revoking all land grants to railroads, and maintained, moreover, that such land grants had lapsed and were invalid for various other reasons set out in the Kuechler case (36 Tex., p. 386). The Governor and Commissioner of the Land Office, acting on this opinion, were refusing to issue certificates to any railroad. The Houston and Great Northern Railroad Company had then instituted suit, or was

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about to do so, in the District Court, against Land Commissioner Kuechler to compel him to issue certificates. This condition of things cast a doubt over the right of all railroads to lands under their charters, which was not removed until the decision of the Kuechler case the next year. Construed in the light of this contemporary history, all the Legislature meant by the proviso in Section 12 was that, if the opinion of the Attorney-General should be sustained by the Courts, then nothing in the Act of 1870 should be considered as reviving or renewing the railway company's claim to a land grant. Any other construction would make Section 12 inconsistent with Section 11 and the whole tenor of the act.

(4) *The right of plaintiff in error to a land grant was a contract right and a vested right, protected by the Federal Constitution from impairment or abridgment by any subsequent law of the State, statutory or constitutional.*

The Buffalo Bayou, Brazos and Colorado Railway Company, having accepted the grants made by the special and general legislation above referred to and having manifested its acceptance by the construction of an important part of its line of railroad, the legislation ripened into a contract

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between the company and the State prior to the adoption of the Constitution of 1869. These contract rights of the company passed unimpaired to the purchasers at the foreclosure sale, who also, as stated in the preamble to the Act of July 27, 1870, expended their means in prosecution of the enterprise which the land grant was intended to encourage. Their rights passed to the plaintiff in error, which was organized and the necessary capital therefor obtained, presumably, on the faith of the promised aid of a land grant held out by the State as an inducement to the investment of capital in such enterprises. It ought not to be questioned that a right to a land grant acquired in this way could not be destroyed or abridged by the Constitution of 1869 without violating the contract clause of the Constitution of the United States and Section 1 of the Fourteenth Amendment.

The State on this branch of the case was driven to contend in the State Court that no vested or contract rights are created by a grant of the right to receive land for the construction of its road contained in the legislative charter of a railroad company. The contrary of this contention was decided by the Supreme Court of Texas and by

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this Court in the cases above cited of *Railroad Company vs. Kuechler* and of *Davis vs. Gray*. In the former case the Court said:

> "The Act of 1854 contained a pledge of "the public faith to railroad companies then "possessing charters, that they should receive "certain benefits for the constructing of the "railways contemplated by their charters.
>
> "Companies had gone to work in the just "expectation that they would reap those "benefits. This law and the law supple- "mentary to it had all the sanctity of a con- "tract between the State and those com- "panies" (p. 393; italics ours).

In the latter case the Court said:

> "That the act of incorporation and the "land grant here in question were contracts "is too well settled in this Court to require "discussion. As such they were within the "protection of that clause of the Constitution "of the United States which declares that no "State shall pass any law impairing the obli- "gation of contracts. The ordinance of 1869, "and the Constitution adopted in that year, "in so far as they concern the question under "consideration, are nullities, and may be laid "out of view. When a State becomes a "party to a contract, as in the case before us, "the same rules of law are applied to her as "to private persons under like circumstances" (p. 232).

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It is insisted, however, that a general land-grant act is a mere bounty law, repealable at the pleasure of the State, without regard to the rights of those who had accepted and acted upon the promise it contained. In support of this contention the case of *Salt Co. vs. East Saginaw*, 13 Wall., 373, is relied upon. That case does not support the State's contention, and is, moreover, inapplicable to a general land-grant act passed to encourage and aid the construction of public highways like railroads. It simply declared that a State may repeal a bounty law, and that no one has such a vested right in the benefits promised as to entitle him to demand the indefinite continuance of the law. But it was not decided that a State can, by the repeal of even a bounty law, impair or destroy rights which had accrued before the repeal.

But a general land-grant act to promote the construction of railroads, like the Acts of 1854 or 1876, is not a mere bounty law. It discharges a duty which the State owes to its inhabitants; it imposes onerous obligations on the grantee; it secures valuable benefits to the grantor. The State is under no obligation to furnish its inhabitants with salt, or to aid them in the manufacture

of it, but the duty does rest upon it to provide public highways. This duty is ordinarily performed through railroad corporations, which are regarded and treated as quasi-public agencies. It has long been the policy, not only of the State of Texas, but of the other States and of the United States, to encourage, by State aid in land or bonds or otherwise, the construction of railroads when the undeveloped and sparsely-settled condition of the country does not offer sufficient inducement for the investment of capital in such enterprises. For such grants the building of the road is the contemplated and sufficient consideration (101 U. S., 71, 83).

The same Court which rendered the decision in Salt Company vs. East Saginaw has declared that legislation similar to the Acts of 1854 and of 1876 does not fall under the category of bounty laws. We refer to the cause of United States vs. Denver and Rio Grande Ry. Co., 150 U. S., 1, 8, 14.

> Page 8: "It was not a mere bounty for "the benefit of the railroads that might accept "its provisions, but was legislation intended "to promote the interests of the Government "in opening to settlement and enhancing the "value of those public lands through or near "which such railroads might be constructed.

"To induce the investment of capital in the "construction of railroads through the public "domain, Congress had previously granted "special rights," etc.

And at page 14 the Court again says:

"It is undoubtedly, as urged by the "plaintiffs in error, the well-settled rule of "this Court that public grants are construed "strictly against the grantees; but they are "not to be so construed as to defeat the "intent of the Legislature, or to withhold "what is given either expressly or by neces- "sary or fair implications. In Winona and "St. Peter Railroad vs. Barney, 113 U. S., "618, 625, Mr. Justice Field, speaking for "the Court, thus states the rule upon this "subject: 'The acts making the grants "'* * * are to receive such a construction "'as will carry out the intent of Congress, "'however difficult it might be to give full "'effect to the language used if the grants "'were by instruments of private conveyance. "'To ascertain that intent we must look to the "'condition of the country when the acts were "'passed, as well as to the purpose declared "'on their face, and read all parts of them "'together.'

"Looking to the condition of the country, "and the purpose intended to be accom- "plished by the act, this language of the "Court furnishes the proper rule of con- "struction of the Act of 1875. When an act,

" operating as a general law, and manifesting
" clearly the intention of Congress to secure
" public advantages, or to subserve the pub-
" lic interests and welfare by means of bene-
" fits more or less valuable, offers to indi-
" viduals or to corporations as an inducement
" to undertake and accomplish great and ex-
" pensive enterprises or works of a quasi-
" public character in or through an immense
" and undeveloped public domain, such legis-
" lation stands upon a somewhat different
" footing from merely a private grant, and
" should receive at the hands of the Court a
" more liberal construction in favor of the
" purposes for which it was enacted (Bradley
" vs. New York and New Haven Railroad,
" 21 Connecticut, 294; Pierce on Rail-
" roads, 491)."

It will not do to say that the offer of land may be withdrawn at any time before the actual construction of the railroad. To maintain this contention the protection of the Federal Constitution must be limited to *executed* contracts. But the constitutional prohibition against the impairment of contracts by a State applies to all contracts, to those *executory* as well as to those *executed*.

" An executory contract is one in which a
" party binds himself to do, or not to do, a
" particular thing. * * * A contract ex-
" ecuted, as well as one which is executory,

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> " contains obligations binding on the parties. " * * * They [the words of the prohibi- " tion in the Federal Constitution] are gen- " eral, and are applicable to contracts of " every description " (Fletcher vs. Peck, 6 Cranch, pp. 136, 137).

The Court then proceeds to show that the prohibition applies to contracts of the State as fully as to contracts of individuals. An executory contract has been defined above. It is also defined in Bishop on Contracts (Ed. of 1887, § 624) as follows:

> " A contract is executory when the thing " agreed has not been done. It is executed " when the thing has been done. After one " party has performed while the other has " not, it is said to be executed on one side " and executory on the other."

The contract and the performance of it are entirely different things. The obligation of the contract arises when the contract is made. An executory contract may be complete and impose binding obligations before the performance of the thing agreed has been accomplished. So, in Hall vs. Wisconsin, 103 U. S., 5, the Court declared unconstitutional a law repealing a prior law authorizing and contracting for the performance of a cer-

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tain public work, although the repealing law was passed before the completion of the work. Contracts usually arise from an offer by one party and an acceptance by the other. The acceptance need not be express; it may be by some overt act. "The doing of a thing pursuant to an offer may "be both an acceptance and performance" (Bishop on Contracts [Ed. 1887], § 329.) An offer may be to all persons or to all of a particular class, and may be accepted and a contract created by being acted on. "If one makes an offer to another, or "to all persons in general, and does not withdraw "it, while the other person in the former case, or "any one in the latter, goes forward and does the "thing, such performance carries with it an ac- "ceptance of the offer; and the person who made "it must pay or do what he proposed" (*Id.*, § 330).

(5) *Section* 6 *of Article* 10 *of the Constitution of* 1869, *having been construed by the State Court as defeating the right which plaintiff in error would otherwise have to a land grant in respect of the changed route or extension, abridges and impairs charter rights and privileges, in the nature of contract and vested rights, within the prohibition of the Federal Constitution.*

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The State Court certainly held that the right of plaintiff in error to the land grant in controversy was defeated by the prohibition in the Constitution of 1869. It was not pretended that the land-grant rights of the old company, or of its purchasers, or of the reorganized company, were ever surrendered or forfeited. The special Act of July 27, 1870, did not take away those rights; it contains no language suggestive of any such purpose. We have shown that the mere change of route could not destroy the right to earn lands by the construction of a road along the substituted route, *and the State Court practically concedes this.* According to the decision of the State Court, Section 6 of Article 10 of the State Constitution alone blocks the way to a perfect title to the lands in question.

If that provision in the Constitution of the State had that effect, then we submit that it violated Section 10, Article 1, of the Federal Constitution, and Section 1 of the Fourteenth Amendment. The protection afforded by the provisions of the Constitution of the United States referred to is not partial; it is complete. A State statute or Constitution which takes a part, however small, of the contract or vested right, is as obnoxious as

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if it sought to take the whole. If the Constitution of 1869 deprived plaintiff in error of the land grant to which it is conceded it would be otherwise entitled for the road constructed on the changed route, it is invalid, and as much in violation of the Federal Constitution as if it had withdrawn the land grant for the original route, or had attempted to retake that which had been granted for the road already constructed. The right to the land grant already existed. It was in force when the Constitution of 1869 was adopted. It was not dependent upon the Act of July 27th, 1870, but antedated that act. There is absolutely nothing in that act to indicate that the Legislature intended to require plaintiff in error to surrender the land grant to which it was entitled as a condition or consideration for the authority to change the route of its road, or to forfeit the important rights it had acquired by the purchase of the old company. Even if any consideration for the act were necessary (and, of course, it was not) it was abundantly secured by the advantages accruing to the State from the construction of the road along the new route, and from the assumption by plaintiff in error of the large indebtedness of the sold-out company to the State

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on account of the school-fund loan. That the Act of July 27th, 1870, was valid when passed, no one disputes, and that the right to the land grant followed the change of route as a matter of course, and without the necessity of any express provision to that effect, is clear, and is indeed conceded by this Court, but for the Constitution of 1869. If it had been necessary to make a new grant, or that the act should provide that the land grant should follow the change of route in order to give it that effect, then it might be contended that the Legislature was deprived by the Constitution of the power to make such grant. Plaintiff in error need not rely upon that act for the land grant. If, therefore, the Constitution had any effect upon the act at all, it was not a *prohibition* of the grant, for that already existed, but the effect, if any, was to *withdraw* the existing grant, and such effect was prohibited by the Federal Constitution. In other words, the change of route authorized by that act did not forfeit the land grant to which plaintiff in error was already entitled, and if it was forfeited, or if plaintiff in error was deprived of it, as the State contends, such result was accomplished only by the Constitution then in force, in which respect

the Constitution was clearly contrary to the Constitution of the United States.

But, aside from this, was the route of the road of plaintiff in error materially changed by the Act of July 27, 1870? This is a question which we have a right to present to this Court, since the change of route is urged as an answer to the constitutional objections we have made against the effect given to the prohibition in the Constitution of 1869. We have seen that there was no cessation or break in the life of the corporation; that it was the same corporation; that none of its rights to lands, admitted to exist, were withdrawn or surrendered. The great scheme and object of the charter remained unchanged. The chief purpose of the general law of January 30, 1854, granting lands to railroad companies, was to promote the construction of trunk lines of railway from the Gulf Coast, or tide waters of Buffalo Bayou, or across the State, toward the Pacific Ocean. The construction of main trunk lines was contemplated, and the benefits of the act were not extended to branch lines. Plaintiff in error's charter, then existing, called for the construction of a road from Buffalo Bayou westwardly, and part of it was then in operation. The special Act of February 4th,

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1854, requiring plaintiff in error's line to be constructed via Austin, and on which reliance is entirely placed for the forfeiture of its rights in this case, contemplated the extension of the road "from "Austin to connect with any road running north "of Austin to the Pacific Ocean," the connection to be made between the 96th and 98th parallels of longitude. We conceive this provision to be very significant. Several lines were then projected, and others were contemplated from the eastern and northeastern boundary of the State, westward to the Pacific Ocean. The evident object and purpose of the Legislature, in requiring the line of plaintiff in error to be constructed via Austin, was with a view to a connection with these lines, forming a through route from tide water and the southeastern portion of the State to the Pacific Ocean. A great transcontinental line was then the object and policy of the Legislature. It was designed by the amendments to its charter to have this road constitute, with its northwestern connections, such a route. The Pacific Ocean was, by that act, made its objective point. The people of Texas, through their Legislature, never relaxed their efforts to secure a line of railway from the

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Gulf to the Pacific Ocean, except during the short period when Section 6, Article X., of the Constitution of 1869, was in force, until they succeeded. It was as much or more an object of public desire on July 27th, 1870, as on January 30th or February 4th, 1854. It was in furtherance of this object and purpose that the route of plaintiff in error's road was changed by the special Act of July 27th, 1870. Instead of reaching the Pacific Ocean, or connecting with lines reaching there via Austin, plaintiff in error was authorized to vary its line to the same destination by constructing via San Antonio. The object was the same in both instances—a transcontinental railway. The object was accomplished, and the road was pushed through via San Antonio to a connection with the Pacific Ocean, and now constitutes one of the most—if not the most—important transcontinental line of railway in America. There was, we submit, no change in the main route of such line. The Pacific Ocean and a transcontinental line of railway was the great object, and variation with respect to intermediate points could not have been a matter of much concern or importance. Can it be doubted that the Legislature was willing to give as readily, and intended to give, land for a line o

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railway from tide water to the great West via San Antonio as via Austin? Can it be supposed that the Legislature of the whole State, desiring to promote the construction of a line of railway, for instance, between Houston and Austin, would not give as readily and as freely for a line via Elgin as via Bastrop? Austin and Houston would be the objective points. Variation at intermediate points would, obviously, be unimportant in such a scheme.

We submit, therefore, that, the object being to secure a line of railway from the Gulf Coast to the Pacific Ocean, the variation of the route from Austin to San Antonio was not a material departure from the purpose of the grant, but, on the contrary, such object and purpose were really accomplished by the change. It was not in any sense a new line, but merely a wise and expedient variation in the original line, designed to better accomplish the objects in view. It ought not, therefore, to be held or considered as in anywise impairing the rights existing under the original grant.

Before leaving this branch of the case, which concerns itself with the rights of plaintiff in error under its legislative charter and the amendments

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thereto, including the Act of July 27, 1870, we desire to call attention to Section 11 of the Act of 1870, and also to refer briefly to the prompt repeal of the prohibition in the Constitution of 1869 against the making of land grants to railroads. These matters throw some light upon the meaning and purpose of Section 6 of Article 10 of the Constitution of 1869 and upon the nature of the special Act of July 27, 1870.

Section 11 of the special Act of 1870 reads as follows :

> " That said new company shall be entitled
> " to the same or similar rights and relief, ex-
> " cept State aid in bonds, or endorsement of,
> " or guaranty of interest on bonds, granted to
> " or provided for any other railroad by the
> " Legislature, and upon the same or similar
> " terms and conditions, so far as such rights or
> " relief are, in their character, applicable to
> " said new company or its line or lines of
> " railroad."

It appears from the conclusions of fact found by the Court of Civil Appeals that construction of the road of plaintiff in error for which the certificates in question were issued began at Columbus westwardly in March, 1873, and was completed to the West Navidad about June 1st, 1874 ; and

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that, in the meantime, the prohibition against granting lands in aid of railroads having been withdrawn by the adoption of an amendment to the Constitution of 1869, the Legislature granted sixteen sections of land to a number of railroads, named in the findings of fact, for each mile of road they should construct.

Plaintiff in error set up and claimed in its answer filed in the court below, and it is a part of its case now, that by reason of the amendment to Section 6 of Article 10 of the Constitution of 1869, and the passage of acts granting lands to numerous railroads, it was entitled, under Section 11 of the special Act of 1870, to receive the land certificates in controversy, if it was not entitled to them under previous legislation. This point was not presented to the State Supreme Court by the certified questions and was not argued in that court. It has not been passed upon by either the Supreme Court or the Court of Civil Appeals. We believe that it affords a complete answer to the State's demand.

Section 11 of plaintiff in error's amended charter undoubtedly meant something, and it could not have any other effect than to grant to plaintiff in error the same aid in the way of lands that

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should be granted to other railroad companies. Evidently it was intended that, in the event the restriction imposed by the Constitution upon the power of the Legislature to grant land for such purposes should be thereafter removed, this company should be entitled to the same relief as was granted to other companies. No doubt it was incorporated in the act with a view to the removal of the constitutional restriction, which was thereafter accomplished by the amendment proposed in 1871 by the same Legislature. The Supreme Court of Texas has held that a law may be passed in contemplation of a change in the Constitution, and to become valid and effective in the event of such change (Railroad Co. vs. Cross, 47 Tex., 428, 436, citing Cooley's Const. Lim. 114, 117; Brig Aurora, 7 Cranch., 32; Peck vs. Weddell, 17 Ohio State, 271). It was known to the Legislature, of course, that the restrictions imposed by the Constitution of 1869 upon the power of the Legislature to grant lands in aid of the construction of railroads for the development of the State was at variance with the settled policy of the State, and with the will of the people, who were debarred from the right of voting upon the adoption of that Constitution. The

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same Legislature, within but a little over a year after it was adopted, proposed an amendment removing the restriction and returning to the policy which had become characteristic, and which resulted in so much benefit to the State. The amendment was adopted by the people at the first opportunity they had to express their opinion at the ballot box, for they were practically disfranchised when the Constitution was adopted.

The amendment was ratified by the Legislature, as we have seen, on March 9th, 1873. The undisputed evidence as well as the findings of the Court of Civil Appeals, as above stated, show the fact to be that the construction of the road in question (that is, west of Columbus) was not commenced until March, 1873. The exact date in March is not shown, but it cannot be material, since but little work could have been done and none of the road completed before the 19th day of that month, even if construction had commenced on the very first day of the month. It follows, therefore, that every foot of the road was constructed and completed after the restrictions imposed by the Constitution of 1869 had been removed and the State had returned to its former policy. Even if all the laws theretofore passed granting lands to rail-

road companies had been repealed by the Constitution of 1869, which of course we deny, the benefit of such as were thereafter passed inured to plaintiff in error under the provisions of Section 11 of the Act of July 27th, 1870. That a great many laws of that character were promptly passed by the Legislature upon ratification of the amendment to the Constitution we have already shown. The doubt which had been cast upon plaintiff in error's right to land for the construction of its road west of the Colorado by the Constitution of 1869, as that Constitution had been construed and attempted to be enforced by Governor Davis and his administration, as evidenced by their conduct, culminating in the litigation of Davis vs. Gray, and Railroad vs. Kuechler, had paralyzed the ability or discouraged the efforts of plaintiff in error to construct its road in accordance with the Act of July 27th, 1870. The amendment had been proposed in May, 1871, and adopted by the people in November, 1872, and it only needed the ratification of the Legislature, which was given in 1873, to make it effective. When that was secured the railway company immediately began the work of construction. Probably the financial aid necessary was withheld until that time, and was

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advanced only upon the faith of the amendment and in the belief that it removed any question about the right to the land grant. The same view was taken by the State authorities, and the certificates were issued accordingly by the Governor and Commissioner of the General Land Office without further question, as construction progressed; at the time, therefore, the road was constructed, and, when each of the certificates described in the State's petition was issued, all constitutional restriction, if any, had been removed, and all doubt cast by the Constitution of 1869 and by the conduct of Governor Davis' administration had ceased. These considerations, we submit, are controlling in the construction of the laws under which the right to the lands is claimed.

The line of road was one intended to be aided by the general Act of January, 1854. The benefit of the act, as well as all other acts granting land in aid of the construction of railroads, was expressly conferred upon plaintiff in error by the Act of February 4th, 1854. The benefit of these laws had been extended by the legislation of 1862 until two years after the war, and within that time the Legislature had extended the same for another

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period of ten years by the Act of November 13th, 1866. Plaintiff in error's right to the land grant was therefore in full force and existed beyond any sort of controversy when the Constitution of 1869 was adopted. We have already endeavored to show that that Constitution did not purport to, and could not have the effect of impairing or in any way interfering with the right thus clearly existing and enjoyed. But if it was so intended, its only just and reasonable effect, if any, in view of its early repeal, was to suspend temporarily the operation of those laws, which again resumed full force upon the adoption of the amendment when the State resumed progress which had been stayed by that Constitution. Looking to the settled policy of the State, continued without interruption from January, 1854, until the adoption of the Constitution of 1869, and to the prompt removal of that restriction by the adoption of the amendment by the people at the first opportunity they had to express their will, and the resumption and continuance for many years of the policy which had resulted in so much benefit to the State, and looking to the action of the State authorities in issuing the certificates and the prompt and diligent prosecution of the work after the adoption of the

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constitutional amendment, we submit that the laws under which the grants are claimed are entitled to a liberal construction in accordance with the intention and will of the people at the time they were enacted. No one will deny that at the time the road was constructed and the certificates in question were issued the people of the State, including all departments of the State Government, intended, with practical unanimity, that plaintiff in error should have, and considered that it was entitled to, the lands granted, and it is only since the road has been constructed, and all the benefits anticipated by the people and the State realized, that the claim has been made that the people and the State authorities did not mean to do, or had no right to do, what they did, and that plaintiff in error has no right to the lands which it in good faith earned, and which the State Government in good faith granted. It was then considered that the general law of 1854, and the law of 1866 extending the same, were in full force, and had not been impaired by the Constitution of 1869, or that the effect of that Constitution was merely to temporarily paralyze them, and that the laws and former policy of the State had come into full force again as soon as the

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restriction was removed by the adoption of the amendment to the Constitution by the people interested in the development and property of the State.

The Constitution of 1869 took effect on March 30, 1870. The amendment of Section 6, Article 10, was proposed by the Legislature by a resolution passed May 17, 1871 (Gen. Laws of 1871, p. 160). It was adopted by a vote of the people on the 5th, 6th, 7th and 8th days of November, 1872. It was ratified by the Legislature by a resolution passed on the 19th day of March, 1873 (Gen. Laws, pp. 224, 225), and became effective on that date. It thus appears that the first Legislature which met after the Constitution of 1869 went into effect—the Twelfth Legislature—adopted the resolution which was the first step in the repeal of the prohibition in Section 6 against land grants in aid of railroads. The amendment has been given in full in the statement of the case.

Particular attention is called to that part of the amendment or proviso which says: "*Nothing in "the foregoing proviso shall affect any rights "guaranteed or secured by laws passed prior to "the final adoption of this amendment.*" (Italics

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ours.) The importance of this amendment lies in the use of the form suitable for giving effect to the proviso as of date of the adoption of the Constitution of 1869. The amendment did not constitute any new grant of power, but operated as a removal, as of date of the Constitution of 1869, of any inhibition originally contained therein. This, of course, left all intermediate legislation in that direction effective and operative, and is a clear recognition of the fact that even the limit of the first proviso of the amendment is not applicable until a day which subsequently became fixed, and it clearly shows that all intermediate legislation between the adoption of the Constitution of 1869–70 and of the amendment of 1872 should, upon such adoption, become effectual and operative.

Besides, independently of the amendment to the Constitution removing the restriction imposed upon the Legislature to make new grants, the general law of 1854, granting lands in aid of the construction of railroads, was still in force as to existing rights, and was extended to November 13th, 1876, by the legislation of January 11th, 1862, and of November 13th, 1866. We have seen that the Constitution of 1869 did not assume to affect existing rights, but only to impose restrictions

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with respect to the future. The special Act of July 27th, 1870, providing for the change of route, evidently intended to grant to this company every benefit that any other company could acquire from any character of legislation. It seems evident from the terms of that act that the Legislature had in mind the probability of the change subsequently effected by the amendment of 1871–1873, and the Supreme Court of Texas has held in Railway Co. vs. Gross, *supra*, that the legislation passed in contemplation of a constitutional amendment subsequently adopted is valid.

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II.

We shall now take up and discuss that branch of the defense which asserts the rights of the plaintiff in error under the General Land Grant Act of August 16th, 1876, and the construction of its road between San Antonio and El Paso, a distance of 623 miles, on the faith of the State's aid in land offered in the Act of 1876, and complains of the repeal of that act by the Act of April 22, 1882, after the railway company had earned the right to receive the promised land grant by the construction of its road between the points named. In support of this part of the case we have assigned as error the action of the State Court in deciding that plaintiff in error had not, under the general Act of the Legislature of August 16th, 1876, by constructing and completing its road between San Antonio and El Paso, in consideration of the grant of sixteen sections of land made by said act for each mile of road so constructed, acquired a contract and vested right to, and was entitled to hold under the grant thus made, the lands involved in this suit, which contract and vested right could not be impaired or divested by the general Act of the Legislature of

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the State of Texas, approved April 22d, 1882, and in not deciding that the last-mentioned act, which attempted to repeal the act granting such lands to said railway company, was and is contrary to and in violation of the Constitution of the United States, and especially Article 1, Section 10, and Section 1 of Article XIV. of the amendments thereof, and could not, therefore, impair such company's contract right or divest it of said lands.

The Court will observe that this branch of the defense is presented in the alternative and need be considered only in the event that your Honors hold that plaintiff in error is not entitled to any land certificates by reason of the construction of the portion of its road between Columbus and the Guadalupe River.

In deciding as it did, that plaintiff in error had not acquired such titles to the lands it claimed to have earned by the construction of its road west of San Antonio as would entitle it to hold the lands in controversy, or to enforce its rights as an equitable defense to the State's demand, the State Court gave effect to the repealing Act of April 22, 1882, which plaintiff in error charged to be an absolute nullity because in contravention of the Constitution of the United States. The re-

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pealing act blocked the way to a perfect title, and the State Court declined to declare it to be unconstitutional or to recognize or give effect to the contract rights of the railway company which were impaired by that act.

The assignment of errors covering this branch of the case are those numbered Fourth to Eleventh inclusive (Printed Record 166, 169). They refer to the assignment of errors made before the Court of Civil Appeals, which present the errors complained of as follows:

"NINTH ASSIGNMENT OF ERROR.

"The Court erred in not rendering judg-
"ment in favor of defendant, because the
"evidence showed that defendant was en-
"titled to said land by virtue of the provis-
"ions of said Act of August 15, 1876, and
"defendant, relying in good faith upon the
"provisions of said act, constructed that por-
"tion of its road between San Antonio and
"El Paso, consisting of six hundred and
"twenty-three and fourteen-hundredths
"(623.14) miles, entitling it to receive from
"the State sixteen sections of land for each
"mile of said completed road, aggregating
"six million three hundred and eighty thou-
"sand nine hundred and fifty-three and six-
"tenths (6,380,953.6) acres—which the State
"of Texas declined to issue to it in land cer-

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" tificates entitling it to locate lands—which,
" upon an accounting between defendant
" and the State, after giving defendant credit
" for 879,078 1–20 acres, the land sued for,
" if erroneously granted, the State would
" still be indebted to defendant company,
" 5,483,875.55 acres, which the State wrong-
" fully withholds from defendant.

"Tenth Assignment of Error.

"The Court further erred in not holding,
" the Legislature of the State of Texas hav-
" ing, on April 22, 1882, repealed all laws
" in force granting land or land certificates
" to railroads, and the action of the executive
" department in declining to issue certificates
" by reason thereof to defendant for 623.14
" miles of completed road, the said act of
" the Legislature was in violation of the Con-
" stitution of the United States, and was an
" impairment of the obligation of defendant's
" contract, and that by reason of the wrongs
" of the State and by virtue of her prior
" laws defendant was entitled to more land
" than it had received certificates for, and
" therefore, under the facts, the State could
" not recover the lands sued for.

" Eleventh Assignment of Error.

" The Court erred, under the facts intro-
" duced in evidence, in not holding that the
" State of Texas was indebted to defendant

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" company in, to wit, 5,483,875.55 acres
" more of land than was sued for, and in
" not permitting defendant to hold the lands
" sued for in settlement of and as a credit
" upon the amount of land owing, as shown
" upon an accounting between the State and
" the defendant.

* * * * *

" THIRTEENTH ASSIGNMENT OF ERROR.

" The Court erred in not decreeing, on ac-
" count of the completion of its track west
" from San Antonio to the Rio Grande River
" in El Paso County, a distance of 623.14
" miles, in accordance with law, the said de-
" fendant was entitled to 9,970.24 cer-
" tificates authorizing the said railway com-
" pany to locate 640 acres of land by virtue
" of each certificate, amounting to 6,380,-
" 953.6 acres of land, and favorably reported
" upon.

" FOURTEENTH ASSIGNMENT OF ERROR.

" The Court erred in not giving the de-
" fendant a credit for 176 land certificates or
" 112,640 acres of land, being for eleven
" miles of completed road inspected and
" duly reported upon June 29th, 1881, by
" William P. Hardeman, who was appointed
" to inspect the same by Governor O. M.
" Roberts on June 25, 1881.

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" SEVENTEENTH ASSIGNMENT OF ERROR.

" The Court erred in not holding under " the law and the facts that the charter of " defendant company, under which it con- " structed its road from Houston, in Harris " County, to El Paso, Texas, was a valid " contract, which entitled defendant com- " pany to receive sixteen sections of land per " mile of completed road for all work done " after the Constitution of 1869 and 1870 " was amended, and that said defendant " company having constructed that part of " its road west from San Antonio while the " law of August 15, 1876, was in force, and " defendant company being entitled to lands " which it had not received by reason of the " law which repealed the grants of land to " railroads, passed April 22, 1882, and not " having had an excessive grant, the said " defendant company should have been al- " lowed, upon equitable principles, to select " the lands sued for and to hold the same " by way of estoppel against the State, as in " cases where land for sidings ARE errone- " ously granted and treated as excessive, en- " titling railroads to selection."

The foregoing assignments of errors are so interrelated that they can be presented more conveniently together. The nature of this branch of the case is such that a discussion of the defense

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on the merits is necessary to show that the constitutional objections to the Act of 1882 suffice, in connection with the rulings of the State Court, to give this Court jurisdiction to review the matter of defense now in question. We have, accordingly, concluded that a presentation of this portion of the case in the order in which an argument on the merits should be presented would have the advantage in clearness and in avoiding repetition over an argument dealing separately with the jurisdictional questions and the merits of the defense as a whole.

We desire, at the ouset, to emphasize the fact that the rights of defendant arising from the construction of its road between San Antonio and El Paso are relied on as constituting not merely a set-off or counterclaim against the State, but a defense to her suit. If the principles of law for which we shall contend are correct, those rights and the conduct of the State in respect to them go to the right of the State to maintain this action and tend to defeat a recovery and to justify a denial of her claim. Hence, the State is called upon to meet a defense and not simply a counterclaim.

The distinction just referred to is important. The State chose to treat this part of our case

as presenting only a set-off or counterclaim, and contented herself in the Court below with pleading the general immunity of a sovereign State from being sued without her consent. We shall endeavor to show that the general rule of immunity from being sued does not apply when a State has voluntarily come into court as a suitor; but, whatever be the conclusion of the Court on that question, it is clear that the sovereignty of the State cannot protect her from any *defenses* which may be urged to defeat her recovery or secure the dismissal of her suit. For instance, she is as fully subject as any other litigant to the rule, which is fundamental and universal in equity jurisprudence, that a party who comes into a court of equity seeking equitable relief must come with clean hands and must do equity in order to obtain equity.

The facts upon which this branch of the case depends are not disputed and may be stated in a few words: The amended or supplemental charter of the plaintiff in error, passed July 27, 1870, authorized it to extend its road from Columbus to San Antonio, and thence to a terminus on the Rio Grande. On August 16, 1876, the General Land Grant Act of 1876 was passed, providing "that any railroad company heretofore

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" chartered, or which may hereafter be organized " under the general laws of the State, shall, upon " the completion of a section of ten miles or more " of its road, be entitled to receive, and there is " hereby granted to every such railroad, from the " State, sixteen sections of land for every mile of " its road so completed and put in good running " order." The act contains some provisos which it is not necessary to consider in view of the decision of the Supreme Court of Texas in the case of the *G. H. & S. A. Ry. Co. vs. State*, 81 Texas, 572. Other sections of the act prescribe the usual formalities for ascertaining compliance on the part of the railroad with the provisions of the act, the issuance of land certificates, etc.

Whatever doubt there was as to the railway company's right to receive land for its road constructed west of Columbus or San Antonio was removed by the Act of 1876, *quoad* any portion of its road constructed thereafter. Its right to receive sixteen sections of land for each mile of its road constructed subsequent to 1876 is unquestionably conferred by the Act of 1876, and was expressly so decided in the case just referred to.

The Act of 1876 was passed to encourage the construction of railroads, then so much needed to

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aid in the development of the vast resources of this State. The offer of land was held out as an inducement to the investment of capital in such enterprises. This offer was accepted by the railway company; and, in consideration of the promised aid and in reliance upon the good faith of the State, it undertook the costly enterprise of constructing a railroad through the vast extent of barren territory between San Antonio and El Paso. Upon this great work, so undertaken, it expended enormous sums of money, had nearly completed its road for the entire distance of over six hundred miles, and had earned the right to patents for nearly six million acres of land, when, the work having been done and the benefits secured to the State, the repealing Act of 1882 was passed!

On April 22, 1882, an act was passed by the State repealing all land grants in aid of railroads. At the date of the passage of this act, the appellant company had actually completed and in running order enough miles of road, constructed subsequent to 1876, to entitle it to patents and land certificates far exceeding in amount or value those now claimed from it by the State. Shortly after the repealing act was passed, the entire road

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between San Antonio and El Paso was completed and in running order. This work, as a whole, was undertaken before the attempted repeal of the Act of 1876 ; the construction was carried on concurrently from San Antonio west and from El Paso east, and constituted one undertaking; hence, the right to receive land for the few miles completed subsequent to the repeal is as inviolable as the right to land earned and vested by the construction prior to the repeal.

The plaintiff in error made due application for appointment of an inspector to examine the road. But the State has refused to do any of the acts which she undertook to do in the Act of 1876 and repudiated her obligations in the premises, assigning as her sole reason the repealing Act of 1882. The proof shows that plaintiff in error has fully complied with the law in respect to the mode and manner of constructing its road and in all other respects.

In the case of *G. H. & S. A. Ry. Co. vs. State*, 81 Texas, 572, the Supreme Court decided that, if the G. H. & S. A. Ry. Co. was not entitled to receive State aid in land under its charter and the general laws prior to 1876, it was entitled to the benefits of the Act of 1876. So, if your Honors

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decide against us on the first branch of the defense, you must hold that the railway company was entitled under the Act of 1876 to receive from the State sixteen sections of land for each mile of completed road west of San Antonio.

From the foregoing it appears that the following questions are presented for decision:

First. The existence and nature of the railway company's rights growing out of the construction of its road west of San Antonio. This involves the question of the validity and effect of the repealing Act of 1882, which depends upon whether the plaintiff in error's rights in the premises were contract or vested rights protected by the Constitution of the United States from legislative impairment or repeal.

Second. The power of the Court to consider for any purpose the rights and claims of plaintiff in error now under discussion. If your Honors hold that the Act of 1876 was a mere bounty law and incapable of conferring any contract or vested rights, even after it had been accepted and acted upon and the State had received the contemplated consideration for the land granted, and, hence, that the repeal thereof was valid and effective to destroy all existing rights or claims of plaintiff in

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error thereunder, then this second branch of the defense falls to the ground. But if you conclude that the Act of 1882 is unconstitutional and null so far as it affects the rights of plaintiff in error earned by the construction of the portion of its road in question, it remains to decide whether these rights can be considered in this case. This depends upon (1) whether, when a State voluntarily comes into a court of equity seeking equitable relief, she can claim, by reason of her sovereignty, exemption from the rules which characterize the administration of justice in a court of conscience, and can insist upon relief being accorded her in violation of the fundamental principles of equity jurisprudence; (2) whether a court is powerless to grant relief against a plaintiff State, even when the relief is in the nature of a defense, or is confined to property not in the possession of the State but within the jurisdiction and control of the Court, and does not involve the issuance of any execution against the State or of any mandate requiring affirmative action on the part of any officer of the State; (3) whether, when a State voluntarily comes into court, she does not subject herself to the jurisdiction of the Court to the same extent as any other litigant, *at*

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least so far as concerns any and all legal or equitable *defenses* to her claim.

Third. The nature of the relief which plaintiff in error is entitled to receive from the Court.

We shall discuss, in the order named, the questions indicated above:

FIRST PROPOSITION.

By constructing its road between San Antonio and El Paso in consideration of the State's offer of aid in land made in the Act of August 16, 1876, *and in reliance upon the good faith of the State, the railway company acquired a contract and vested right to receive sixteen sections of land for each mile of road so constructed. The repealing Act of* 1882—*passed after the acceptance of the State's offer, after the construction in reliance thereon, at enormous expense, of six hundred miles of road, and after the State had secured the benefits of the quasi-public work, the contemplated consideration for the land grant—is, so far as it affects the company's rights, unconstitutional, null and void. It impairs the obligation of a contract, in violation of Section* 10, *Article* 1, *of the Constitution of the United States; it amounts to a deprivation of property without due process*

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of law, in violation of Section 1 of the Fourteenth Amendment of the Constitution.

The correctness of this proposition would seem to be too clear to require argument or citation of authority. We ask leave to refer, however, to the argument and authorities heretofore presented under Heading I. of this argument. If our first proposition is sustained, the railway company has a contract and vested right to receive from the State certificates and patents for over six million acres of land, the contemplated consideration for which the State has secured and for years has enjoyed. And the State Court erred in not declaring the unconstitutionality and nullity of the Act of April 22, 1882. We now come to the next proposition.

SECOND PROPOSITION.

When a State voluntarily comes into court she subjects herself to the jurisdiction of the Court to the same extent as any ordinary litigant, at least so far as concerns any and all legal or equitable defenses to her claim. She can obtain equitable relief only when entitled to it upon principles of equity and good conscience. The rights and claims of the railway company above discussed should be considered by the Court, at least so far

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as they constitute an equitable defense, and enforced, at least so far as they afford ground for dismissing the suit of the State or conditioning the relief accorded her upon her doing justice to plaintiff in error, or for quieting the company in the possession of the land it now has.

We again direct attention to the fact that the rights of plaintiff in error arising from the construction of its road west of El Paso are urged, not merely by way of set-off and counterclaim, but as an equitable defense. Any matter constitutes an equitable defense which shows that complainant, by reason of his conduct, has no standing in a court of equity or that the relief sought should be withheld or conditioned upon his doing equity. Hence, should your Honors conclude that you are without power to entertain a set-off or counterclaim against the State, presented under the circumstances of this case, there still remains the question whether the rights of plaintiff in error here in question and the conduct of the State in reference thereto do not present a case of such unfair dealing between man and man as to require a court of conscience to withhold equitable relief from complainant.

There can be no question as to the equity nature of this suit. The State is seeking the

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cancellation of written instruments on the ground of error, and the removal of a cloud from its title. Such relief is essentially equitable in character. On removal to the United States Circuit Court, the case would certainly fall on the equity side of that court. In a State where courts of law and courts of equity are separate, it would undoubtedly have been dismissed if it had been brought in a court of law. As the courts of the State of Texas have full chancery powers and can administer equity and enforce fair dealing and good faith to the same extent as any court of exclusively equity jurisdiction, the decision of the questions now under discussion depend upon the general powers of a court of equity and the general principles of equity jurisprudence which govern the administration of justice in a court of conscience.

Whether the demand is snch as in equity and good conscience ought to be enforced is not affected by the sovereign character of the complainant. As was well said by Judge SAWYER in *United States vs. Dalles Military Road Co.*, 41 Fed. Rep., 493, p. 501 :

> " Whatever is inequitable, as between
> " man and man, in their dealings with each

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" other, should also be deemed inequitable,
" as between the United States and those
" with whom they condescend to deal, under
" like circumstances."

Let us now repeat briefly the case made out by plaintiff in error :

We show that we constructed our road to El Paso at enormous cost in the just expectation of the faithful performance by the State of her promise and her contract to give us sixteen sections per mile for each section of ten miles completed, and that, by the construction of the road we earned and became entitled to receive patents for over six million acres of land, patents far exceeding in amount and value those sought to be canceled in this suit; that on a fair accounting the State would owe us ten times as much land as she seeks to recover, and we claim that, if we are not otherwise entitled to the land sued for, we are entitled to it by reason of the construction of the road to El Paso.

We charge that the State unjustly and illegally (for an unconstitutional law affords no legal justification) refused to issue to us the patents we have earned or to recognize in any way our rights to the land we are entitled to receive. We

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charge that the conduct of the State in seeking to take from us a few hundred thousand acres of land when she owes us many millions is grossly unjust, unfair and oppressive, and is contrary to equity and good conscience.

We claim that a court of equity can and should consider the rights and claims of defendant and the conduct of the State in respect to them, and, if it finds that the State has unjustifiably refused to recognize her obligations in the premises, it should deny the State the equitable relief she seeks, or grant it only upon condition that she do equity and consent, if her consent be necessary, to have the railway company's rights and claims passed upon in this cause, in order that the Court may do complete justice.

We claim, moreover, that plaintiff in error is at least entitled to have its rights arising from the construction of its road to El Paso recognized and enforced *quoad* the land sued for, which is not in the possession of the State, but within the jurisdiction and control of the Court; and that, by reason of its rights and the obligations of the State in the premises, defendant is at least entitled to be quieted in the possession of the land it has received from the State.

We deny that the general immunity of the State from being sued affords any reason why the Court cannot consider, for the purpose and to the extent indicated, that portion of defendant's case now under discussion. We maintain that when a State voluntarily comes into court as a suitor she submits herself to the jurisdiction of the court as any other suitor, and stands in no other or better position than any other litigant; that her right to equitable relief has to be decided by the general principles of equity jurisprudence; that when she comes into a court of equity she must do so with clean hands; that when she seeks equity she must do equity; that she can never expect a court of conscience to grant her relief in respect to a demand which is contrary to equity and good conscience; that, if she wishes to use her immunity from suit to withhold from a citizen his just rights, she must not pursue that citizen before the bar of a court of conscience, for such a Court will require her to do justice before it will give her justice.

These principles are so consonant with the general principles of right and justice that we believe they would command your Honors' acceptance even if the courts had not spoken on the subject.

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On the other hand a Chancellor should be loath to assent to the contention of the State that she can ask the Court to cancel patents issued to the railway company in consideration of work done of quasi-public character, the benefits of which have been enjoyed by the State, work undertaken under the belief which, to say the least, was shared in by all the departments of the government at the time, that the company would thereby earn these patents; that she can seek the cancellation of these patents when on a fair accounting she would owe the company patents far exceeding in number and amount those which she attacks, and that, in the prosecution of such a claim, she can shelter herself behind her supposed immunity from suit and shut off all inquiry as to her indebtedness and obligations to defendant for the same kind of property arising out of the construction of the same road.

We submit that the position of the State on this branch of the case is abhorrent to one's sense of justice, and is so unfair in principle, so unjust in its consequences, that your Honors should find it difficult to accept it as a law to govern a court of conscience.

This question must be decided on broad prin-

ciples of equity and justice. It is the proud function of a court of equity to do complete justice in any matter before it, to prevent oppression and bad faith, and to compel the complainant, if necessary, to perform his obligations as a condition to obtaining the relief he seeks. In the accomplishment of this purpose it is allowed the greatest latitude in the form of decrees it may render. It has full power to render a decree to suit the requirements and the special equities of each case. It owes its origin to the want of elasticity in the common-law writs and remedies. Hence, if the English language can formulate a decree which will accomplish what is just and right in respect to the lands which are the subject of this suit and fully within the Court's jurisdiction, a court of chancery has power to render it.

> " It is said the orders issued in this case
> " are without precedent. Every just order
> " or rule known to equity courts was born
> " of some emergency, to meet some new con-
> " ditions, and was, therefore, in its time,
> " without a precedent. If based on sound
> " principles, and beneficent results follow
> " their enforcement, affording necessary re-
> " lief to the one party without imposing

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" illegal burdens on the other, new remedies
" and unprecedented orders are not unwel-
" come aids to the Chancellor to meet the
" constantly varying demands for equitable
" relief. Mr. Justice BREWER, sitting in
" the Circuit Court of Nebraska, said:

" 'I believe most thoroughly that the pow-
"' ers of a Courtof Equity are as vast, and
"' its processes and procedure as elastic, as
" ' all the changing emergencies of increas-
" ' ingly complex business relations and the
" ' protection of rights can demand.'

" Mr. Justice BLATCHFORD, speaking for
" the Supreme Court, in Joy vs. St. Louis,
" 138 U. S., 1; 11 Sup. Ct. Rep., 243, said:

" '* * * It is one of the most useful
" ' functions of a court of equity that its
" ' methods of procedure are capable of being
" ' made such as to accommodate themselves
" ' to the development of the interests of the
" ' public in the progress of trade and traffic
" ' by new methods of intercourse and trans-
" ' portation ' " (*Toledo, etc., R. Co. vs. Penn. Co.*, 54 Fed. Rep., p. 751.)

All that our case requires and all that we ask of the Court is to hold that, on the case made out by the record, the plaintiff in error, by the construction of its road to El Paso, has earned the right to receive lands from the State; that the State withholds these lands and refuses to issue

certificates or patents therefor; that this conduct of the State may be considered by this Court in respect to the relief sought by her as a suitor in this Court; that these rights of plaintiff in error may be considered in determining whether the State has come into court with clean hands, in determining whether she is entitled to any relief from a court of conscience until she does justice to plaintiff in error, or consents, if her consent be necessary, to have its claims passed upon in this suit; or that the rights of the plaintiff in error to receive land from the State may be considered so far, at least, as regards the land brought within the control of the Court by this suit, and enforced to the extent, at least, of quieting plaintiff in error in the possession of the land it has already received.

Such relief does not involve the taking of any property from the State, or the issuance of any execution against the State, or of any mandate requiring affirmative action on the part of any officer of the State. It simply involves the recognition and protection of the rights of the railway company *quoad* property not in possession of the State and within the jurisdiction and control of the Court. Relief of this character

and to this extent this Court certainly has power to grant.

We shall now briefly call attention to some authorities which, it is believed, show that this Court has power to entertain, and should entertain, that portion of plaintiff in error's case which sets up the unconstitutionality of the act of 1882 and its rights to land earned by the construction of its road to El Paso, at least so far as to recognize and decree the existence of those rights, and to enforce them at least *quoad* property in possession of the company and brought by this suit within the jurisdiction and control of this Court, or, by reason of those rights, to quiet the company in the possession of the property sued for, or turn the complainant out of court.

1. *Abeel vs. Culbertson*, 56 Fed. Rep., 329 :

Some of the questions in this case are identical with some of the questions presented in the case at bar; and the other questions involved are so analogous as to make the decision in the Abeel case directly applicable to the instant case. The Abeel case originated in the State Court in a suit by the State to cancel certain patents issued to the Waco and Northwestern Railroad Co., of which Abeel was Receiver. Defendant peti-

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tioned for the removal of the case to the Federal Court on the ground that the case presented issues that depended on a construction of the Constitution and laws of the United States. The State Court declined to order the removal of the cause. Defendant filed a transcript of the record in the Federal Court, and sought to enjoin the prosecution of the case in the State Court.

In passing upon the application for an injunction the Court had to decide whether the case had been properly removed, and also how far the general immunity of a sovereign State from being sued prevented a Court from doing complete justice between the parties in a suit instituted by the State.

After deciding that the case presented Federal questions and was properly removed, Judge McCormick thus disposed of the contention that the Court could entertain no demand of defendant against the State, because to do so would be to entertain a suit against a State:

> "We have no difficulty in holding that "the State, when she brings a suit against "citizens or other parties, accepts all the "conditions that affect the ordinary suitors, "except that no affirmative judgment, as for

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"the payment of costs, can be rendered
"against her. The Eleventh Amendment to
"the Constitution only exempts her from
"suits commenced or prosecuted by others.
"When she institutes a suit against a citi-
"zen, and cites him to answer, she cannot
"draw the mantle of sovereignty about her,
"and bid him, thus challenged, contend with
"her under any disability imposed by the
"Eleventh Amendment; she comes into court
"as any other plaintiff, so far as her oppo-
"nent's right to defend is concerned. There-
"fore, we consider that the motion for in-
"junction made in this case should be
"viewed in the same way exactly as if the
"Attorney-General in his individual capacity
"was the party, and the State was not the
"party. Whether the State is the party or
"not makes no difference in this matter.
"She being a party plaintiff to the litigation,
"the suit one of her own voluntary institu-
"tion, and now properly removed to and
"pending in the Circuit Court, this motion
"should be determined as if she were an
"ordinary suitor."

In this opinion Judge BRYANT concurred.

2. *Clark vs. Barnard*, 108 U. S., 436, 447, 448:

This was a suit by the assignee of a railroad company to recover from the Treasurer of the State of Rhode Island a certificate representing a right to receive $100,000 deposited with the

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City of Boston. Pending the suit the money was brought into court by the city, and the State intervened and claimed the money.

Objection was made that the suit for the recovery of the certificate from the Treasurer was in effect a suit against the State and the State's immunity from suit was pleaded. In answer to this the Court said :

> " We are relieved, however, from its con-
> " sideration by the voluntary appearance of
> " the State in intervening as a claimant of
> " the fund in court. The immunity from
> " suit belonging to a State, which is re-
> " spected and protected by the Constitution
> " within the limits of the judicial power of
> " the United States, is a personal privilege
> " which it may waive at pleasure, so that in
> " a suit, otherwise well brought, in which a
> " State had sufficient interest to entitle it to
> " become a party defendant, its appearance
> " in a Court of the United States would be
> " a voluntary submission to its jurisdiction ;
> " while, of course, those courts are always
> " open to it as a suitor in controversies be-
> " tween it and citizens of other States. In
> " the present case the State of Rhode Island
> " appeared in the cause and presented and
> " prosecuted a claim to the fund in contro-
> " versy, and thereby made itself a party to
> " the litigation to the full extent required
> " for its complete determination. It became

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" an actor as well as defendant, as by its in-
" tervention the proceeding became one in
" the nature of an interpleader in which it
" became necessary to adjudicate the adverse
" rights of the State and the appellees to
" the fund to which both claimed title."

3. *Hans vs. Louisiana*, 134 U. S., 1, 20:

In discussing the doctrine of a State's immunity from suit, Judge BRADLEY, the organ of the Court, said :

"To avoid misapprehension, it may be
" proper to add that, although the obliga-
" tions of a State rest for their performance
" upon its honor and good faith, and cannot
" be made the subject of judicial cognizance
" unless the State consents to be sued, *or*
" *comes itself into court*, yet, where prop-
" erty or rights are enjoyed under a grant
" or contract made by a State, they cannot
" wantonly be invaded. Whilst the State
" cannot be compelled by suit to perform its
" contracts, any attempt on its part to vio-
" late property or rights acquired under its
" contracts may be judicially resisted, and
" any law impairing the obligation of con-
" tracts under which such property or rights
" are held is void and powerless to affect
" their enjoyment" (*Id.*, pp. 20, 21).

Attention is called to the words we have italicized, which show that the Court considers the

State's coming into court, and its consent to be sued, as equally conferring jurisdiction on the Court to enforce the contract obligations of the State.

4. In this connection the words of Justice SWAYNE in *Davis vs. Gray*, 16 Wall., 203, 232, are pertinent:

> "When she [the State] or her representa-
> "tives are properly brought into the forum
> "of litigation, neither she nor they can as-
> "sert any right or immunity as incident to
> "her political sovereignty."

5. So in *Railroad Co. vs. Mississippi*, 102 U. S., 135, it is declared that the exclusion by the Eleventh Amendment of the Constitution of the judicial power from suits brought against a State does not apply to a suit brought by a State (see p. 140 at bottom).

9. *United States vs. Budd*, 43 Fed. Rep., 630, 633, 634:

In this suit the United States sought the aid of a court of equity to have canceled certain patents to land issued in error of law and without authority. The Court finding that there had been no intentional misconduct or fraud on the part of the defendants, and that the issuance of

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the patents was due as much to the error of the officers and agents of the plaintiff as of defendant, laid down for the government of such a suit the principles of equity for which we are now contending:

> "When the Government of the United "States seeks relief from a court of equity, "it is as much bounden as any individual "suitor by the rules of equity. It can obtain "such relief only when entitled to it upon "principles of equity and good conscience" (citing authorities, p. 633).

7. *State vs. Morgan*, 12 Southwestern Rep., 243, 244 (Supreme Court of Arkansas, 1889):

This was a suit by the State of Arkansas to recover land alleged to have been illegally patented to the defendant. The Court held that the proper remedy of the State was by suit in equity. In the course of the decision the Court laid down as applicable to such a case the principles of law and equity for which we are now contending, viz.:

> "It is a familiar principle of equity juris- "prudence that 'when a complainant comes "'before a court of conscience, invoking its "'aid, such aid will not be granted except "'upon equitable terms'" (p. 244). "It

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" has been held that the sovereign is not " bound by any statute of limitations or " barred by the laches of the officers, in suits " to enforce a public right; yet it must re- " ceive its relief in accordance with the gen- " eral principles of equity, and not in viola- " tion of those terms " (p. 245). "The Court " can render no judgment against the State, " but it may impose equitable terms in " administering relief, and make a full com- " pliance with them a condition to its enjoy- " ment " (p. 245).

The fact that the property concerned in this suit is not in the possession of the State, but within the jurisdiction of the Court, is of controlling importance in determining the power of the Court to adjudicate upon the rights of plaintiff in error at least so far as they affect its right to retain the lands already in its possession.

1. *Cunningham vs. Macon & Brunswick R. R.*, 109 U. S. 446, 451 :

In this case Justice MILLER, speaking for the Court, classified the different cases in which relief had been granted against the State notwithstanding its general immunity from being sued. Our case falls under the first class of cases discussed, which are thus defined :

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"(1) It has been held in a class of cases "where property of the State or property in "which the State has an interest comes be- "fore the Court and under its control, in the "regular course of judicial administration, "without being forcibly taken from the pos- "session of the Government, the Court will "proceed to discharge its duty in regard to "that property. And the State, if it chooses "to come in as plaintiff, as in prize cases, "or to intervene in other cases when "she may have a lien or other claim "on the property, will be permitted to "do so, but subject to the rule that "her rights will receive the same considera- "tion as any other party interested in the "matter, and be subjected in like manner to "the judgment of the Court. Of this class "are the cases of The Siren, 7 Wall., 152, "157; The Davis, 10 Wall., 15, 20; and "Clark vs. Barnard and others, 108 U. S.

2. *The Siren*, 7 Wall., 152, 154:

The "Siren" was a vessel captured by the United States for blockade running. While being conducted to Boston she ran into and sank another vessel. The collision was due to the fault of those in charge of the "Siren." She was libeled by the United States, condemned as lawful prize and sold, and the proceeds deposited in the treasury of the United States. The owners of

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the sunken vessel intervened in the prize proceedings and claimed damages and prayed that the same be paid out of the proceeds of the sale. On objection that the intervention was a claim against the United States, it was dismissed by the District Court.

On appeal the Supreme Court stated very emphatically the general immunity of the United States from being impleaded in a direct suit for damages or anything else, saying that the same exemption from judicial process extends to the property of the United States, and that they agreed with the District Judge, that "there is "no distinction between the suits against the "Government directly and suits against its "property."

> "But," they go on to say, "although di-
> "rect suits cannot be maintained against
> "the United States, or against their prop-
> "erty, yet, when the United States institute
> "a suit, they waive their exemption so far
> "as to allow a presentation by the defend-
> "ant of set-offs, legal and equitable, to the
> "extent of the demand made or property
> "claimed, and when they proceed *in rem*
> "they open to consideration all claims and
> "equities in regard to the property libelled.
> "They then stand in such proceedings, with

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" reference to the rights of defendants or " claimants, precisely as private suitors, ex- " cept that they are exempt from costs and " from affirmative relief against them be- " yond the demand or property in contro- " versy. In *United States vs. Ringgold* (8 " Pet., 444) a claim of defendant was al- " lowed as a set-off to the demand of Gov- " ernment. ' No direct suit,' said the Court, " ' can be maintained against the United " ' States. But, when an action is brought " ' by the United States to recover moneys " ' in the hands of a party who has a legal " ' claim against them, it would be a very " ' rigid principle to deny to him the right " ' of setting up such claim in a court of " ' justice, and turn him round to an appli- " ' cation to Congress.' So in *United States* " *vs. Macdaniel*, 7 Pet., 16, to which reference " is made in the case cited, the defendant " was allowed to set off against the demand " of the Government a claim for services as " agent for the payment of the navy pension " fund, to which the Court held he was " equitably entitled. The question, said the " Court, was whether the defendant should " surrender the money which happened to " be in his hands, and then petition Con- " gress on the subject; and it was held " that the Government had no right, legal " or equitable, to the money" (pp. 154–5; see, also, U. S. vs. Bank, 15 Peters, 377).

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The decision contains an interesting and instructive discussion of the right and propriety of the Court's entertaining claims for money or property against the sovereign when the sovereign is already in court as a suitor, or when there is money or property not in the possession of the sovereign, and so within the control of the Courts, that relief can be afforded *quoad* the funds or property without requiring affirmative action on the part of the State.

3. *The Davis*, 10 Wall., 15 :

The principles set forth in The Siren, *supra*, were repeated in the above case. The syllabus sufficiently indicates the nature of the case and the views of the Court.

> " Personal property of the United States
> " on board of a vessel for transportation
> " from one point to another is liable to a
> " lien for salvage services rendered in saving
> " the property. Such lien cannot be enforced
> " by the Courts by a suit against the United
> " States.
>
> " Nor by a proceeding *in rem*, when the
> " possession of the property can only be had
> " by taking it out of the actual possession of
> " the officers or agents of the Government
> " charged therewith.
>
> " It may be enforced by a proceeding *in*

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" *rem* where the process of the Court can
" be enforced without disturbing the posses-
" sion of the Government, which, being thus
" compelled to appear in court to assert its
" claim, must discharge the lien before the
" property will be delivered to it.

" To deprive the Court of jurisdiction the
" possession of the State must be actual, not
" constructive."

See, also, U. S. vs. Bank, 15 Peters, 377.

We invite special attention to The Siren, *supra*. It is ample authority for our contention that the Court has full power to entertain any equitable set-off or counterclaim against the State *quoad* the land not in the possession, actual or constructive, of the State, but within the jurisdiction and control of this Court. The reasoning and the authorities cited in that case also show that, in dealing with equitable defenses and counterclaims against a State, the Court should consider that the defendant would be practically remediless if his claims were not considered in cases where the State had voluntarily appeared as suitor. The reason for not entertaining a counterclaim not closely connected with the main demand is that defendant can easily enforce his claim in another suit. The reason failing

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where the claim is against a State, the courts are justified in entertaining a claim set up by way of equitable defense or set-off or counterclaim against a State which it would have required to be made the subject of a direct independent action if the suit had been between private individuals.

We maintain, however, that the claims of the State and of the plaintiff in error are closely connected. Plaintiff in error's road to El Paso is one road constructed under one charter, and represents a single enterprise undertaken and continued in reliance upon the State's promise of aid in land made in the charter and in the various land-grant acts, the last of which was the Act of 1876. The rights earned by the construction of the road are so related by the unity of the enterprise, of the corporation undertaking it, and of the resulting railroad, that they cannot be divided into separate and independent parts. Moreover, the fact that the claims of the State and of the railway company are directed towards the same thing—the land sued for—connects them sufficiently to justify the consideration of both in this suit. It does not lie in the mouth of the State to say that the claims to land for the con-

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struction of the road to El Paso have not been defined and are not evidenced by patents. She cannot profit by her own wrong. She cannot urge against plaintiff in error the results of her own refusal to perform her obligation to issue certificates and patents. We have here a proper case for the application of the rule that equity will regard what ought to have been done as done. In an analogous case the Supreme Court of this State, referring to conduct of the State, said:

> " Now, it is a familiar principle of the law " of contracts that, if one party is prevented " from fully performing his contract by the " act of the other party, the party in fault " cannot be allowed to take advantage of " his own wrong, and screen himself from " payment for what has been done under " the contract " (*Railroad Co. vs. Commissioner, etc.*, 36 Texas, p. 393).

Speaking of the powers of a court of equity to grant relief, in the nature of an equitable set-off, against a demand which, in justice and good conscience, ought not to be enforced, the Supreme Court of the United States said in *Rolling Mill Co. vs. Ore and Steel Co.*, 152 U. S., p. 615:

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> "Cross-demands and counterclaims, whether arising out of the same or wholly disconnected transactions, and whether liquidated or unliquidated, may be enforced by way of set-off whenever the circumstances are such as to warrant the interference of equity to prevent wrong and injustice."

We have not been referred to, nor have we been able to find, a single authority holding that a State is entitled to relief in a court of equity when, under the same circumstances, such relief would be withheld from an ordinary suitor because his demand was inequitable and contrary to justice and good conscience. A sad spectacle would be presented by a court of equity endeavoring to administer justice in suits by a State, shorn of its essential attributes, without power to restrain unfair dealing or to take notice of complainant's bad faith and unconscionable treatment of defendant!

THIRD PROPOSITION.

Defendant is entitled to, and the Court has full power to render, a decree dismissing the suit on the ground that, under the circumstances, the complainant's demand is unconscionable, or a

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decree withholding the relief sought unless and until the complainant performs in good faith her obligations to defendant, or a decree quieting defendant in the possession of the land it now has on the ground that, if not otherwise entitled thereto, it is entitled to receive and hold it as part of the agreed consideration for the construction of its road to El Paso.

This proposition has been anticipated and covered by the argument and authorities in support of the Second Proposition.

As there is no distinction in this State between courts of law and courts of equity, and as the State courts administer legal or equitable relief, or both, as the nature of the case demands, this Court, having all the powers of a court of chancery, is fully competent to render in this case such a decree as will do complete justice between the parties. In the case of *G. H. & S. A. Ry. Co. vs. State*, 81 Texas, 572, the Supreme Court of Texas rendered a special decree to fit the equitable requirements of the case before it ; so your Honors can now render a decree which will meet the particular equities arising from the just rights of the railway company and the unfulfilled obligations of the State, created by the construction of the

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portion of the road between San Antonio and El Paso under the circumstances detailed above. Hence, the authorities we have cited as to the obligation of the State to do equity when she seeks equity and as to the power of a court into which a State has come as a suitor to entertain and enforce claims against her *quoad* property brought by the litigation within the jurisdiction of the Court, are applicable to the cause in this Court.

Considering the strong equities of the railway company's case, the obligations of the State growing out of the construction of the same road, that on a fair accounting she would owe appellant patents or certificates many times exceeding in number or value those she seeks to cancel, and that appellant is remediless unless complete justice is done in this cause, we submit that this Court should render a decree which will, at least, quiet appellant in the possession of the land it now has. As was stated above, such relief does not involve the taking of any property from the State, or the issuance of any execution against the State, or of any mandate requiring affirmative action on the part of any officer of the State. It involves simply the recognition and protection of

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the rights of plaintiff in error *quoad* property not in possession of the State and within the jurisdiction and control of the Court. It is not affirmative relief against a State, but merely negation of relief to the State.

It was urged in the State Court that the public land was exhausted. To this we reply that we are not seeking to recover from the State any of the exhausted public land. The inequity of the State's case does not consist so much in her withholding from us something she owes us and still has in her possession, but in seeking to wrest something from us when at the same time she owes us twice as much of the same thing. Her very inability, if it exists, to give us the patents and certificates we have fairly earned, makes it inequitable and unjust for her to attempt to take away a far less quantity of patents and certificates which were received from her for the construction of the same road in respect to which her indebtedness arose.

Suppose A promised to give B 1,000 bales of cotton to build him a certain road, and, while B was at work, A disposed of all of his cotton, so that when the work was finished he had no cotton wherewith to pay for it. Is not A as much

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in default as if he had the cotton and refused to give it to B? Suppose there had been a previous transaction between the parties, in virtue of which B had constructed another piece of road for A and had received 500 bales of cotton therefor. If A, finding a flaw in the last-mentioned transaction, were to bring suit to recover the 500 bales, while enjoying the full benefit of the road, and came into a court of equity for relief, would not such a Court consider his obligation to B for the 1000 bales and refuse to permit him to recover the 500 bales, and would A's conduct be considered any the less reprehensible because he had put it out of his power to pay the 1000 bales? Would not the Court be all the more disposed to withhold aid if, by reason of A's character, B should not bring suit against him.

We submit that, if the public land became exhausted at any time after we accepted the State's offer of aid in land, the equities of the case are not in the least affected thereby; and, as we ask only to be quieted in the possession of the land we now have, the exhaustion of the public land can have no effect upon the relief we seek.

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III.

We shall now take up the assignment of error based on the action of the State Court in refusing the application of defendant in the Court below, plaintiff in error here, to remove the cause into the Circuit Court of the United States, and in proceeding with the cause after the presentation of the petition and bond for such removal. A decision upon the question of the right to remove requires a familiarity with the whole case now before this Court for review. Hence, in order to avoid repetition, we postoned a discussion of that question until the nature of this case was fully shown by the argument upon the merits. In view of what has already been written, the presentation of this branch of the case will be very brief.

The State's petition filed in the Court below alleged that the Buffalo Bayou, Brazos and Colorado Railway Company was chartered by the special Act of February 11, 1850. It also alleged "that by the special Act of the Legislature of "the State of Texas, approved July 27th, 1870, "the name of the Buffalo Bayou, Brazos and "Colorado Railway Company was changed to

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"the Galveston, Harrisburg and San Antonio "Railway Company, the defendant," etc. It also alleged that at the time the aforesaid Act of July 27th, 1870, was passed, "the Constitution "of 1869–70 forbade the Legislature from au- "thorizing or granting lands to railway com- "panies for the construction of their roads, "though no lands were granted by said act;" and also alleged that the issuance of the certificates described in the petition was "in violation "of the constitution and laws of this State," etc. It sufficiently appeared from this petition, and also from the aforesaid Act of July 27th, 1870, specially pleaded therein, that part of your plaintiff in error's line of railway, extending from Harrisburg to Columbus, had been constructed and was in operation prior to the adoption of the Constitution of 1869.

Plaintiff in error in due time presented to the Court below its application to remove this cause into the Federal Court upon the ground, in effect, that the suit was one arising under the Constitution and laws of the United States. It was claimed in effect, in the petition for removal, as well as in the original answer filed therewith, that plaintiff in error had proceeded under its

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charter granted by the special Act of February 11th, 1850, and the acts amendatory thereof and supplementary thereto, to construct, and had constructed, prior to the adoption of the Constitution of 1869, a large and important part of its line of railway—*i. e.*, from Harrisburg to Columbus—and had acquired thereby, and under the special acts relating to it, and under the general laws referred to by such acts, a contract and vested right to sixteen sections of land for each mile of road which it should construct, and that the Constitution of 1869, pleaded by the State in its original petition, impaired the obligation of such contract, in violation of Section 10, Article 1, of the Constitution of the United States, and deprived plaintiff in error of property without due process of law, in violation of Section 1 of the Fourteenth Amendment of said Constitution. The application to remove was denied by the Court below, to which ruling petitioner duly excepted.

It appeared from the special acts incorporating and relating to plaintiff in error, as pleaded in the State's original petition, and from the general law of January 30th, 1854, referred to in and made a part of such special acts, that

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plaintiff in error was entitled to sixteen sections of land for each mile of road it should construct, unless the grant thus made had been in some manner withdrawn; and the Constitution of 1869 was specially set up by the State in its petition as a reason why the railway company was not entitled to the grant for the construction of its line to San Antonio. By reference to the special laws mentioned in the State's petition it appears that the railway company was incorporated by the special Act of February 11th, 1850; that by the Act of January 29th, 1853, it was granted eight sections of land for each mile of its road; that by an Act of February 4th, 1854, it was granted all the rights, privileges and benefits accruing from any general law or laws that had been or might thereafter be passed by the State to encourage the construction of railroads in the same manner and to the same extent as if the gauge of its road was the same as then fixed or might be thereafter fixed upon by the State; and this had the effect of conferring upon the company the land grant provided by the general law of January 30th, 1854, which was then in force. It also appeared from another special Act of February 4th, 1854, that

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the route of the company's road was restricted to an extension of their existing road to Austin, etc.; and it appeared in the special Act of July 27th, 1870, pleaded in the State's petition, that such restriction with respect to route was removed by that act. It further appeared from the Act of July 27th, 1870, pleaded by the State that the railway company had constructed its road from Harrisburg to the Colorado River, which necessarily involved a very large expenditure of money, prior to the adoption of the Constitution of 1869.

It appears, as above stated, from "the plaintiff's statement of his own claim," as contained in the original petition, and from the special laws referred to therein, read in the light of the general laws granting lands to railroads, that plaintiff in error had a contract with the State for sixteen sections of land for each mile of road it should construct; that it had accepted the grant and performed, at a large expense, an important part of its contract by constructing, in pursuance of the same, a large part of its lines prior to the adoption of the Constitution of 1869, and had thereby become invested with the rights created by said contract, and that, if it was not entitled

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to the land sued for, it was only because the Constitution of 1869 repealed the legislation referred to, which had ripened into a contract between the State and the railway company. The State could not possibly recover without invoking the Constitution of 1869. It abundantly appeared, therefore, from plaintiff's statement of its own case, as contained in its original petition, that plaintiff in error had, by reason of the legislation mentioned and the construction of a part of its road thereunder, a contract right to the land sued for, which was impaired by the Constitution of 1869, and that even under the rule laid down in TENNESSEE vs. UNION BANK, 152 U. S., 454, the case was removable.

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IV.

In the statement of the case we called attention to the State's plea of estoppel, based on the argument alleged to have been made on behalf of plaintiff in error by its then counsel in former litigation with the State. The case is reported in 17 Sou. West. Rep., 67 (81 Tex., 572), under the title of G. H. & S. A. Ry. Co. vs. State. This plea was not sustained by the Court which decided the case pleaded by way of estoppel, and we do not apprehend that your Honors will take a different view of the matter. As it is a specious plea and seems on its face to show that the railway company has assumed inconsistent positions in respect of its land-grant rights, we submit now the argument we presented when the question was before the State Court.

Discussion of the Case of G. H. & S. A. Ry. Co. vs. State (81 Texas, 572; 17 Sou. West. Rep., 67).

The object of this suit was to recover 60 sections of land located and surveyed for the company under 60 alternate certificates issued July 12, 1877. The certificates referred to the road

between Guadalupe Bridge and San Antonio, and purported on their face to have been issued under the Act of January 30, 1854, and acts amendatory thereof. The grounds of action set forth in the petition were:

1. The certificates were issued under the Act of January 30, 1854, and acts amendatory thereof, all of which laws had expired by their own terms and limitations, and were repealed by the Constitution of 1869 and other Acts of the Legislature before the construction of the road for which the certificates were issued.

2. The company, in procuring said certificates, had falsely and fraudulently misrepresented the length of the completed section for which certificates were claimed, stating it to be 36 miles and 1,474 feet of main track and 2 miles 2,000 feet of side-track, when in reality there were only 30 miles 1,205 feet of main track, the rest being side-track.

3 and 4. The 2 miles 2,000 feet of side-track were not connected with the section for which the certificates were issued, but pertained to sections of the road previously completed for which certificates had already been obtained. And the certificates referred to in the

petition were issued for the 8 miles 2,269 feet of sidings, for the construction of which the company was not entitled to the aid of the State by any laws general or special.

5. The sidings in question were necessary appurtenances, etc., of defendant's railway.

6. It could not be determined from the face of the certificates, or otherwise, which were located and surveyed for sidings and which for main track.

The prayer of the petition was for a recovery of the lands and a cancellation of the certificates.

The answer denied that the misrepresentation as to the mileage of main-track siding was intentional or due to defendant's fault, averring that it was an error of the State's engineer. It contained other averments which the Court states "it is not necessary to notice" (p. 68).

By supplemental petition the State said:

> "The defendant was never entitled to re-
> "ceive the lands in controversy, or any
> "other lands in aid of constructing its rail-
> "way west of the Guadalupe Bridge, for the
> "reason that, by the terms of its charter,
> "passed July 27, 1870, and the amendments
> "passed March 10, 1875 (mentioned in
> "plaintiff's petition), which were referred

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" to and made part hereof, it was required
" to, and undertook to, complete its said
" road to San Antonio on or before January
" 26, 1876, conditioned that, in the event it
" failed to do so, it would forfeit all the
" rights, powers and privileges therein con-
" ferred. That it failed to so construct or
" complete its said road to said place within
" said time—on or before January 26, 1876
" —and, therefore, it *ipso facto*, by the terms
" of its said charter contract, which the
" State here pleads, interposes and demands
" to be enforced, lost and forfeited all its
" rights and all privileges, immunities, grants
" of lands, if any it ever had, held or was
" entitled to by virtue thereof."

The lower Court made a detailed finding of facts as to the number of certificates issued to defendant, for what portion of road issued, the extent and manner in which certificates for main track and sidings had been issued by the successive officers and agents of the Government, etc., and that defendant's road from Guadalupe Bridge to San Antonio was constructed and completed between November 17, 1876, and February 13, 1877, and the sidings between October 31, 1876, and February 13, 1877.

The judgment of the lower Court was that the State recover the lands sued for and that the cer-

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tificates be canceled. The judgment was based on the conclusion of law that, as the law did not authorize a railroad to receive land for the construction of sidings, the certificates in question, showing on their face that they were issued for sidings and main track indiscriminately, were illegal and void.

The appellant assigned for error that the Court erred in its conclusions of law; that the laws did not grant lands for sidings, and that the certificates in suit were null and void.

The Attorney-General urged in the Appellate Court that "by reason of its delay in construct-" ing its road to San Antonio" the appellant did not acquire a right to any lands, and for this reason the judgment should be affirmed, even though the conclusion of law of the lower Court were wrong. To this the Court said if the judgment was correct it would not be reversed because a wrong reason was given for it.

The following questions were presented to the Court for decision and were decided in the order named:

1. Did the defendant by the construction of its road to San Antonio acquire a right to any lands under any laws?

2. If so, was it entitled to receive lands for sidings?

3. If not, did the issuing to it of certificates indiscriminately for main track and sidings avoid the entire issue of certificates?

Before passing upon the rights of defendant to receive lands under any laws, the Court had to decide whether it had forfeited its charter by failure to complete its road to San Antonio within the limit prescribed in its charter. This preliminary question was decided in favor of the defendant, the Court holding that the failure to construct the road within the stated period was merely a potential ground of forfeiture which the State might have enforced, if it chose, in a direct action for the purpose.

The Court then approached the question of defendant's right under any laws to any land for the construction of its road to San Antonio. There were two sources from which defendant's right to receive lands might be derived, viz.: First, under the Act of January 30, 1854, and acts amendatory thereof, in connection with its charter and its amendments; second, under the General Land Grant Act of August 16, 1876. These two sources of title were not so inconsist-

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ent that defendant could not urge them in the alternative. It had a right to lands under its charter and laws prior to the act of 1876; or, if not, it was entitled to them under the Act of 1876. Hence, there were two possible roads by which the Court might reach the same conclusion; namely, the right of defendant to receive lands. Was it necessary for the Court to hew its way through both roads when it could reach a conclusion by traversing only one?

The Attorney-General endeavored to block both of the possible sources of defendant's title. To the claim based on its charter and laws prior to 1876, he opposed that the Act of January 30, 1854, and acts amendatory thereof, had expired by their own terms and limitations, and were repealed by other acts of the Legislature and by the Constitution of 1869 before the portion of the road in question had been constructed (see statement of grounds of action at beginning of the opinion). To the claim under the Act of 1876 he opposed that the failure of the defendant to construct its road within the charter limit excluded it from the benefits of the Act of 1876 by reason of the proviso that the act "shall not "be construed to renew or continue any right to

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" companies who have failed or may fail to " comply with the terms of their charters, with " reference to the completion of portions of their " roads in stated times."

The contention of the Attorney-General as to the absence of any right in defendant to receive land under laws prior to 1876 presented for decision many grave and difficult questions of statutory construction and constitutional law. For instance, it involved the meaning and effect of the legislation of 1862 and 1866, extending for stated times the provisions of the General Land Grant Act of 1854, the competency of the Legislature at that time to enact such laws, the constitutionality of such legislation, the meaning of the prohibition of land grants in the Constitution of 1869, the rights of defendant under Section 11 of the charter of 1870 in connection with the Constitutional Amendment of 1873, and the numerous special grants of lands in aid of particular roads passed after the amendments and prior to the construction of the portion of its road under discussion. All these questions were involved in the contention of the Attorney-General, and would have been argued and urged by the de-

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fendant had its counsel not seen a shorter way out of the difficulty.

Courts show their human element by preferring the easiest way to a desired result. So the Court, in this case, finding that the argument of defendant suggested an easy solution of the difficulty, adopted the short cut afforded by the seeming tacit concession of counsel. The position of defendant's counsel was that, if everything contended for by the Attorney-General, in respect to the defendant's right (or want of right) to lands under laws prior to 1876 be true (and for the sake of argument it might all be conceded to be true), the only result was to make clear defendant's right to the land under the Act of 1876. The question with which the Court was then concerned was whether defendant had a right to land for the construction of the portion in question under any laws, and it made no practical difference to the State or to the defendant whether the Court found it entitled to the land under the Act of 1876, or under prior laws.

The main subject of controversy in this case was the right to receive land for sidings. From its decision to the present time the case has been known and referred to as the Railroad Sidings

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Case. This was the point to which the attention and argument of defendant's counsel was mainly directed. In his brief submitting the case to the Court the attack on the entire land grant of defendant was not discussed. That was an afterthought. When, after submission, additional argument was called for, defendant's counsel saw that the State's case was confronted by the following dilemma: If the defendant was entitled under its charter and laws, prior to the Act of 1876, to receive land for the construction of its road to San Antonio, that settled the question, and it did not need the aid of the Act of 1876, which became inapplicable. But if it be true that, at the passage of the Act of 1876, defendant had no right to receive land under its charter or other laws, then there was no good reason why it was not a beneficiary under that act and entitled to land under its provisions. When called on for a supplemental argument, defendant's counsel saw that the Attorney-General, in endeavoring to escape the first horn of the dilemma, had impaled himself on the second. Hence, he contented himself with calling attention briefly to the Attorney-General's predicament. To impale him on either horn was sufficient to win the point concerned.

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Logic follows nature and does not try to impale with both horns at the same time.

The foregoing explains why the counsel for defendant did not argue or present the many grave and difficult questions which the Court should and would have discussed and decided if it had intended to definitely determine the rights of defendant to receive land under its charter and laws prior to the Act of 1876. It explains why the Court was able to say:

> "The Attorney-General contends, and "counsel for appellant seems to concede, "that the authority to issue the certificates, "if it existed at all, was conferred by the "Act of August 16, 1876."

It is true that twice in the course of its opinion the Court stated that defendant had not acquired any right by the construction of that particular piece of road prior to the Act of 1876. But a reading of the decision in the light of the foregoing explanation will show that such statements are based on the tacit concession made by defendant's counsel. An examination of the argument of defendant's counsel and of the opinion of the Court will demonstrate that not one of the questions presented by defendant's

contention in the case now at bar—that it had and has a right to receive land for the construction of its road from Columbus to Guadalupe Bridge under laws prior to 1876—was presented to or considered or passed upon by the Court in the case under discussion. For instance, the Court did not consider or pass upon the rights of defendant under Section 11 of its charter of 1870 ("the most favored railroad clause") in connection with Acts of the Legislature subsequent to the constitutional amendment of 1873, granting to various railroad companies a right to receive sixteen sections of land per mile of completed road. Nor was the Court called upon to determine the effect of the peculiar form of the Constitutional Amendment of 1873, which we contend removed the bar against legislative grants of land in aid of railroads as of the date of 1869, and was intended to give effect to intermediate legislation on the subject. Nor were any of the questions now presented to your Honors urged or decided. The Court simply took a short cut to a decision of the broad question before it—whether the defendant had a right to the land under any laws. In doing so it accepted the concession of defendant's counsel, and assumed that it was not

entitled to the land prior to 1876, and thus reached the conclusion that it was entitled to the land under the Act of 1876. It was proper to made the assumption without actually considering and deciding the points involved; for neither party would have been injured, and the result would have been the same, if the contrary of the assumption had been the truth.

It is claimed that this decision is a bar, or at least an estoppel, to the assertion by the defendant of a right to receive land for the construction of its road between Columbus and the Guadalupe Bridge.

If by bar is meant that the decision opposes the force of the thing adjudged to the rights set up by defendant in this suit, it is sufficient to answer that the identities necessary to constitute *res adjudicata* are lacking.

The parties are the same, but the thing demanded and the cause of action are clearly different. If it is meant merely that the former case opposes the authority of a decision of the Supreme Court of Texas against the rights now claimed by defendant, enough has been said to show that the decision is not authoritative on that point. Does that case speak with authority

upon the meaning and effect of the proviso in the constitutional amendment saving all legislative grants of land to railroads passed prior to its final adoption from being subject even to the limit of twenty sections to the mile, or upon defendant's contention that the amendment related back to the prohibition of 1869, removing the bar and giving effect to intermediate legislation? It does not speak at all upon the subject. And it is likewise silent upon the right of defendant under Section 11 of its charter to have the same rights to land as were conferred upon other railroads by the special legislation which followed the adoption of the constitutional amendment of 1873. These rights of defendant may or may not exist, but it certainly has a right to have them passed upon by the Court. They were not presented to the Court in the former case, and they were not then considered or decided.

The claim that the concession made by defendant's counsel in the Val Verde case is an estoppel against the assertion of a right, in respect to the portion of the road concerned in this suit, to receive land under legislation prior to 1876, is without merit. It is repugnant to the common ethics of logic and to fair reasoning to make use

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of a concession, tacit or express, made for the purposes of an argument elsewhere than in the argument with reference to which it was mad.e If defendant's counsel had dreamed that his tacit concession in that case would be used to defeat even the assertion or any rights of defendant in other litigation, he would have qualified and explained it, as has been done above. If, out of abundant caution, he had qualified his position by declaring that it was made simply for the purposes of that suit, because he could afford to yield the point without affecting the result, no question of estoppel would ever have arisen. Assuming, for the sake of the argument, that the defendant had valid rights to land under legislation prior to 1876, which would protect it against the demand made by the State in this suit, is it not preposterous to hold that, by the failure of counsel to qualify a position taken in argument in another case, his client has lost the right to recover 800,000 acres of land not concerned in the former case?

It is an essential element of an estoppel that the person pleading it should have been misled to his prejudice by the words or conduct of the party against whom it is pleaded. This essential

is wanting in the present case, for the State has been in no way prejudiced by the concession made in the Val Verde case. It has been intimated that defendant's change of position has in it an element of bad faith; that it won the Val Verde suit by admitting it had no right to land prior to the Act of 1876, and it now seeks to win this suit by withdrawing that admission. This charge is easily refuted. Suppose the tacit concession had not been made in the Val Verde case, what would have been the result? Defendant's counsel would have presented and urged the rights of defendant prior to 1876, which are now set up. The Court might have contented itself with stating the dilemma of the State, and saying that defendant was entitled to land either under legislation prior to 1876, or under the Act of 1876, and that it was unnecessary to decide which was the true source of its right, since under one or the other it was entitled to the lands in question, except so much as had been received for sidings. Or it might have settled the question then as to defeudant's rights. If it had decided in defendant's favor the questions now presented to the Court, the decree would have been the same as the one actually rendered. For

the failure to complete the road in the stated time did not of itself work such a forfeiture of its charter rights, including the right to land (Schulenberg vs. Harriman, 21 Wall., 44).

If it had decided against defendant's rights under prior legislation, it would have been exactly where the tacit concession placed it, and would have proceeded to render the same decree.

We submit, therefore, with confidence, there is nothing in this decision which can operate as an estoppel or bar to the assertion by appellant of its rights to land under legislation prior to 1876, and, moreover, that there is nothing authoritative in the decision as to the views of the Supreme Court of Texas upon the questions involved in the claims of appellant under such legislation.

If your Honors decide against appellant, on their merits, the rights it now sets up to the land in suit, based on its charter and the general laws prior to 1870 or 1876, it will have no cause to complain; but we respectfully submit that it would be a hardship, amounting almost to a denial of justice, to hold that appellant is estopped from urging those rights, and your Honors are precluded from examining into their merits, simply because, in a suit in which those rights

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were not essential and without prejudice to the case could be laid out of view (inasmuch as the portion of the road then in question was built subsequent to the Act of August, 1876), appellant's then counsel did not consider it worth while to insist upon them.

We ask that the decree of the State Court be set aside, and that the right of plaintiff in error to the lands in controversy be recognized and established.

Respectfully submitted,

JAS. A. BAKER,
R. S. LOVETT,
JOSEPH PAXTON BLAIR,
Of Counsel for Plaintiffs in Error.

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APPENDIX.

AN ACT to incorporate the Buffalo Bayou, Brazos and Colorado Railroad Company:

SECTION 1. *Be it enacted by the Legislature of the State of Texas*, That Sidney Sherman, Hugh McLeod, John G. Todd, John Angier, Jonathan F. Barrett, E. A. Allen, Wm. M. Rice, W. A. Van Alstyne, J. H. Stevens, B. A. Sheppard and W. H. Hutchins, and their associates and successors be, and they are hereby created and established a body corporate and politic, under the name of the Buffalo Bayou, Brazos & Colorado Railway Company, with capacity in said corporate name to make contracts; to have succession and a common seal; to make by-laws for the government and the regulation of its affairs; to sue and be sued; to plead and be impleaded; to grant and receive; and generally to do and perform all such acts and things as may be necessary or proper for, or incident to the fulfillment of its obligations, or to the maintenance of its rights under this act, and consistent with the constitution of this state.

SEC. 2. That the said company be, and is hereby invested with the right of locating, constructing, owning and maintaining a railway, commencing at any suitable point on Buffalo Bayou, between Lynchburg and Houston, in the county of Harris, and thence running by such course, and to such point at or near the Brazos River, between the towns of Richmond and Washington, inclusive, as said company shall deem most suitable, with the privilege of

making, owning and maintaining such branches of said railway as they may deem expedient.

SEC. 3. That the parties named in this act, or a majority of them, with such persons as they may associate with themselves for this purpose, are hereby appointed commissioners and invested with the rights of forming and organizing said company, and generally of exercising the powers of Directors until Directors are chosen, when the powers of the commissioners shall cease.

SEC. 4. That the capital stock of said company shall not exceed five hundred thousand dollars. The amount to be determined by the Commissioners or Directors, and by them divided into shares of such equal par value as they shall think fit, each share entitling the owner thereof to one vote, in person or by proxy, at all meetings of the company; and the shares shall be deemed personal estate, and shall be transferrable by any conveyance in writing, recorded either by the treasurer in books kept by him at his office for that purpose, or by an officer duly authorized by the Directors, in books kept by him at such other place as the said Directors may appoint: Such transfers are recorded in such other place being written (within ?) thirty days, communicated to the treasurer, and by him entered into his books.

SEC. 5. That the immediate government and direction of the affairs of the company shall be vested in a Board of not less than five directors. Said directors shall elect one of their own number to be President of the company. The first Board of Directors shall be chosen by said commissioners and such persons as they may associate with themselves for the purpose, and at such time and place as they shall appoint; and they shall hold their offices until others are duly elected in their places by the members of the company. No person shall be eligible to the office of director unless a subscriber or owner of at least five shares of the capital stock. The directors shall have power to fill any

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vacancy in their own Board, arising from non-election, death, resignation or other cause; to appoint a clerk, treasurer and such other officers and agents as they may consider necessary, and prescribe and require bonds for the faithful performance of their duties. They may, if the same is not fixed by the by-laws, determine the manner of calling and conducting all meetings, the number of members that shall constitute a quorum; and do or cause to be done all other lawful matters and things which they may deem necessary or proper in conducting the business of the company; they shall keep, or cause to be kept, accurate records of all meetings of the directors and company, and accurate books of accounts of the receipts and expenditures of the company. A majority of the Board of Directors shall have the power of a full board, and all conveyances and contracts in writing executed by the President and countersigned by the treasurer, or any other officer duly authorized by the directors, under the seal of the company, and in pursuance of a vote of the Directors, shall be valid and binding.

Sec. 6. That the shares in said capital stock may be disposed of by the directors in such manner and on such terms as they shall think best for the interest of the company; and any agreement in writing, whereby any person shall become a subscriber to the capital stock, may be enforced against him according to its terms. And if any subscriber shall fail to pay any amount due upon shares subscribed by him according to the terms of his subscription, the directors may sell at auction and transfer to the purchaser the shares of such delinquent, and if the proceeds of sale shall not be sufficient to pay the amount so due, with interest and charges, such delinquent shall be held liable to the company for the deficiency, and if the proceeds shall exceed the amount so due, with interest and charges, he shall be entitled to the surplus.

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SEC. 7. That it shall be lawful for the company to enter upon and purchase, or otherwise take and hold any land necessary for the purpose of locating, constructing and maintaining said railway, with all necessary depots and other buildings, and if they shall not be able to obtain such land by agreement with the owner thereof, they shall pay therefor such compensation as shall be determined in the manner provided in the following section. The land so taken for the road-bed shall not exceed fifty yards in width, and for depots and buildings only such further width as shall be necessary.

SEC. 8. That any person, when land has been taken as aforesaid, may apply to the District Court in the county in which such land is situated for the appointment of, and said court shall thereupon appoint three disinterested freeholders of the county, who shall appoint a time and place to hear the applicant and the company, to whom shall be given reasonable notice, by the court, of said time and place; and said freeholders shall, after being sworn, and after hearing the parties, determine the amount of compensation as aforesaid, and make return of their award to said court at its next term; and said award may be confirmed, or for any sufficient reason rejected by said court, in the same manner as awards of arbitrators under a rule of court; and if confirmed by the court, judgment shall issue thereon as in other cases. In determining the amount of compensation to be paid as aforesaid, said freeholders shall be governed by the actual value of the land at the time it was taken—taking into consideration the benefit or injury done to other neighboring land of the owner by the establishment of said railway. If in any case the amount found by the arbitrators shall not exceed the amount proved to have been offered by said company to the owner prior to his application to the court, the owner shall pay the costs of the proceedings, otherwise the company shall pay the same.

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SEC. 9. That it shall be the duty of said company, whenever any state or county road now established shall be crossed by said railway, to make and keep in repair good and sufficient cause-ways at such crossings, and in all cases where any person shall own land on both sides of the railway, and there shall be no other convenient access from one part to the other, such owner shall have the right of passage free of costs at all reasonable times across said railway.

SEC. 10. That the City of Houston is hereby authorized to construct, or cause to be constructed, a branch railway from said city to connect with the railway hereby established; that they shall have the same rights to enter upon and condemn lands as the company have, and generally to have the same rights to construct their branch as are granted by the charter to the railway company; and the Mayor and Aldermen of said city of Houston are hereby made a party to this charter. And when such brach railway shall be so constructed, the cars of such branch may be run over said main railway, or any part thereof; *provided*, the cars of such branch railway are run at such hours as not materially to interfere with the running of the cars of said main railway; *and provided further*, that the proprietors of said branch pay to the company owning said main railway such compensation for the use of said main railway as shall be reasonable, the amount of such compensation, unless agreed upon by the parties, to be determined by three disinterested men, one of whom shall be chosen by the President, or chief officer of each of said railway companies, and the other by those two; the decision of said three men to be final, and binding for the period of two years from the rendering the same; *and provided further*, that the proprietors of said branch railway shall not be at liberty to use upon said main railway, or any part thereof, their own engines or other motive powers, unless the company owning said main railway shall unreasonably refuse or

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neglect to draw the cars of said branch over said main railway with the engines or other motive power of said company.

SEC. 11. That as soon as the railway company hereby established shall commence running any portion of their road, they shall file in the State Department a full and accurate report of the cost and mode of construction of their road, and make such further reports of their doings and condition as the Legislature shall from time to time require.

SEC. 12. That if said company shall cross any navigable stream they shall do it so as not to interfere with its navigation.

SEC. 13. That said company may acquire by purchase or gift any real estate the directors shall think desirable in order to promote or hasten the construction of said railway. They may borrow money on their bonds or notes at such rates as shall be deemed expedient; *provided, however,* that nothing in this act shall be construed to confer banking privileges of any kind.

SEC. 14. That said commissioners shall have the right to demand and receive such rates and prices for the transportation of passengers and freight as they may think proper, not exceeding five cents per mile for passengers, and not exceeding the rate of fifty cents per hundred pounds for every hundred miles the same may be carried; *provided, however,* that the state shall have the right to regulate the price to be charged for carrying the mails.

SEC. 15. That if any person shall wilfully injure or obstruct said railway or its property, such person shall be punished by fine and imprisonment at the discretion of the court, and shall also be liable to action by said company for damages.

SEC. 16. That the sale of town lots in the town of Harrisburg hereafter made by said company, or their agent, shall not be considered binding upon the purchaser, unless said

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railroad shall be in complete and practicable operation for the distance of twenty miles within two years from the passage of this charter; the sale of the lots to be annulled by a reconveyance of the lots to the company.

SEC. 17. That if said railway is not commenced within one year from the passage of this act, and if at least twenty miles are not in running order within two years, then this charter shall be null and void.

Approved February 11th, 1850.

Note: The above act is published in the General Laws of the Third Legislature of Texas 1849–50 as Chapter CLVI, Pages 194–198.

AN ACT legalizing the Organization of the Buffalo Bayou, Brazos & Colorado Railroad Company:

WHEREAS, the commissioners of said company were under the necessity of using the power of attorney of two of the absent commissioners for the purpose of calling a meeting of the same; and

WHEREAS, there is a doubt as to the right of said commissioners to act by virtue of a power of attorney under the charter granted to said company, in calling said meeting; therefore,

SECTION 1. *Be it enacted by the Legislature of the State of Texas,* That the organization of the Buffalo Bayou, Brazos & Colorado Railroad Company, which took place in the City of Boston, in the State of Massachusetts, on the first day of June, 1850, be and is hereby declared legal, and shall have the same force and effect as if organized strictly in conformity with said charter.

SEC. 2. That this act take effect from and after its passage.

Approved September 4, 1850.

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Note: The above act is published as Chapter XV, pages 13–14 General and Special Laws of the Third Legislature of Texas.

"AN ACT to amend the 13th, 16th and 17th Sections of the 'Act to incorporate the Buffalo Bayou, Brazos and Colorado Railroad Company'.

SECTION I. *Be it enacted by the Legislature of the State of Texas*, That Sections 13th, 16th and 17th of the 'Act to incorporate the Buffalo Bayou, Brazos and Colorado Railroad Company, approved Feb. 11, 1850, be amended so as to read as follows:

SEC. 13th. That said Company may acquire by purchase or gift any real estate the Directors shall think desirable, in order to promote or hasten the construction of said Railroad. They may borrow money on their bonds or notes, at such rates as shall be deemed expedient, and *mortgage their property to secure the same; prouided*, however, that nothing in this Act shall be construed to confer banking privileges of any kind.

SEC. 17. That if said railroad is not commenced within one year from the passage of said Act of Incorporation, and if, at least, twenty miles are not in running order within *three years* then this charter shall be null and void." (Amended.)

SEC. 2. That said extension of time hereby intended to be granted to said company is granted upon the following conditions: That said company shall be required, at all reasonable times, and for a reasonable compensation, to draw over their road, the passengers, merchandise and cars of any other railroad corporations which have been, or may hereafter be, authorized by the legislature of the State to enter with their railroad and connect with the Railroad of

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said Company; And if the respective companies or corporations shall be unable to agree upon the compensation aforesaid to be paid, the President of each of said companies shall choose one man as a commissioner, and these two shall elect a third man as umpire, neither of whom shall be a stockholder or employee of either road, but entirely disinterested, and they shall fix the rates, which shall not be changed for one year from the time of their going into effect. Said commissioners shall also fix stated periods at which said cars are to be drawn as aforesaid, having reference to the convenience and interests of said corporations, and the public who will be accommodated thereby. And the State hereby reserves the power to make, from time to time, such reasonable regulations for the government of said company as may appear to be required for the public good, and as may be usual and customary in other States.

SEC. 3. That this Act take effect from and after its passage. Passed January 31st, 1852.

AN ACT to amend an Act to incorporate the Buffalo Bayou Brazos & Colorado Railway Company:

SECTION 1. *Be it enacted by the Legislature of the State of Texas*, That sections second, third and seventeenth of the "Act to incorporate the Buffalo Bayou, Brazos & Colorado Railway Company", approved February 11, 1850, be so amended as to read as follows:

SECTION 2. That said company be, and is hereby invested with the right of locating, constructing, owning and maintaining a railway, commencing at a suitable point on Buffalo Bayou in the county of Harris, and thence running by such course and to such point or points at or near the Brazos and Colorado rivers, or across the same as said company may deem advisable, with the privilege of making, owning and

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maintaining such branches to said road as they may deem expedient.

Sec. 3. The capital stock of said company shall consist of all its property, real and personal, franchises and rights to property; shall be divided into shares of one hundred dollars each, each share shall entitle the owner thereof to one vote in person or proxy, at all meetings of said company; said shares shall be deemed personal estate, and shall be transferable by any conveyance in writing, recorded either by the Treasurer in books kept by him at his office for that purpose, or by any other officer duly authorized by the directors, in books kept by him in such other place as the directors may appoint. Such transfers as are recorded at such other place, being within thirty days communicated to the Treasurer, and by him entered into his book.

Sec. 17. If at least twenty miles of said railway are not in running order by the 11th February, 1854, then said charter shall be null and void.

Sec. 2. That there shall be granted to said company eight sections of land, of six hundred and forty acres each, for every mile of railway actually completed and ready for use, and upon the application of the President of the company, or any duly authorized agent thereof, stating that any section of five miles or more of said railway has been completed and is ready for use, it shall be the duty of the Comptroller of Public Accounts to require the State Engineer or a commissioner to be appointed by the Governor, to examine said railway, and upon his certificate that said section of said railway has been completed in good and substantial manner, and is ready for use, the Comptroller shall give information of that fact to the Commissioner of the General Land Office, whose duty it shall be to issue to said company land certificates to the amount of eight sections of land, of six hundred and forty acres each, and shall be located upon any unappropriated domain of the State of Texas, within twelve

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months from the issuing thereof, which date shall appear upon the face of each certificate, and upon the return of the field-notes of any survey made by virtue of any certificate thus issued, it shall be the duty of the Commissioner of the General Land Office to issue patents to said company in their corporate name; one-fourth of which said lands thus patented shall be alienated by the company in six years, one-fourth in eight years, one-fourth in ten years, and the other fourth in twelve years, so that the whole of the lands thus granted shall pass from the hands of the company within twelve years from the date of the patents thus issued. Said company shall have the same right or power that any other company have, or may hereafter have, chartered by this state, to connect and contract with other railway companies, and in case of disagreement between said companies, the same shall be referred and settled as provided for in like cases, and be binding for one year.

SEC. 3. The sixteenth section of said act of incorporation is hereby repealed.

SEC. 4. That this act be in force and take effect from and after its passage.

Approved January 29, 1853.

Note: The above act is published as Chapter II, pages 3–5 of the Special Laws passed at the extra session of the Fourth Legislature of Texas.

AN ACT to encourage the construction of Railroads in Texas by donations of lands.

SECTION 1. *Be it enacted by the Legislature of the State of Texas*, That any railroad company chartered by the Legislature of this state, heretofore or hereafter, constructing within the limits of Texas a section of twenty-five miles

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or more of railroad, shall be entitled to receive from the state a grant of ~~sixteen~~ sections of land for every mile of road so constructed and put in running order.

SEC. 2. That any railroad company having actually put under contract as much as twenty-five miles of its road, or its entire road when the length may not exceed twenty-five miles, upon filing a certified copy of such contract with the Commissioner of the General Land Office, and depositing with the Treasurer of the state a bond with two or more good sureties, to be approved by him in favor of the Governor of the state, in the sum of ten thousand dollars, conditioned as hereinafter required, may file an application with any district surveyor of any land district in this state, a copy of which applicaton shall in all cases be forwarded to the Commissioner of the General Land Office by the district surveyor, to survey any quantity of the public domain lying and being in such district, and subject to location and entry, not to exceed eight hundred sections, and said application shall specifically describe the lands applied for and intended to be surveyed; and if said company shall produce and file with the district surveyor a certificate of the Commissioner of the General Land Office that a copy of its contract has been filed in said office for the construction of twenty-five miles or more of said road; and also a certificate from the Treasurer that a bond as required by this act has been deposited in his office, said application shall exempt the land so designated from any future location, entry or preemption privilege until otherwise directed as hereinafter provided; provided, that no application for a survey of lands under the provisions of this act shall be made for more than six months before the completion of such section; and if said section be not completed and notice thereof given as herein provided within six months from the time of the application, then such land applied for shall become

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subject to location and entry as if no such application had been made.

SEC. 3. That it shall be the duty of said company to cause to be surveyed the land so designated, into sections of six hundred and forty acres each, and in square blocks of not less than six miles, unless prevented by previous surveys or a navigable stream, which surveys shall be delineated upon a map or maps, the even and odd sections being differently colored and regularly numbured from one upwards to the full number contained in the block, and the field notes of said surveys and map or maps shall be by said company doposited with the Commissioner of the General Land Office.

SEC. 4. That the condition of the bond mentioned in the second section of this act shall be that said company will cause to be surveyed the land designated and applied for within the time limited for the construction of said section of twenty-five miles by the contract, and in the manner required by the third section of this act; and shall actually construct the said section of twenty-five miles of said road within the time mentioned in said contract, in default of which said land shall become forfeit to the use of the state, which forfeiture shall be declared by the District Court of Travis county at the first term thereafter without other formality than as hereinafter provided.

SEC. 5. That if at the time stipulated in said contract for the completion of said section of twenty-five miles, the field-notes and map or maps of the land applied for, be not deposited in the General Land Office as herein required, it shall be the duty of the Commissioner to forward immediately to the Treasurer of the state and the district surveyor of the land district where the land applied for is situate, a certificate of the fact, whereupon the land so applied for shall become subject to location and entry by any one as if no such application had been made; and it shall be the

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duty of the Treasurer ten days before the session of the district court of Travis county to cause notice of such forfeiture to be advertised in one of the newspapers published at Austin for two successive weeks; and at said session of the district court it shall be the duty of the Attorney General, or in case he be not present, of the District Attorney, to file a motion for the forfeiture of said bond, whereupon said court shall proceed without other citation or notice, to declare said bond absolutely forfeited and to render judgment against said company and surities for the amount of judgment against said company and sureties for the amount of said bond, upon which judgment execution shall issue as in ordinary cases; provided, that it shall be necessary for the Attorney General or District Attorney to file with said motion a certified copy of said bond under the hand and seal of the Treasurer, and also a copy of the contract deposited in the General Land Office, and a certificate of the commissioner that said surveys and map or maps of the lands applied for have not been returned.

Sec. 6. That any railroad company having completed and put in running order a section of twenty-five miles or more of its road, may give notice of the same to the Governor, whose duty it shall be to appoint some skilful engineer, if there be no state engineer, to examine said section of road, and if upon the report of said engineer, under oath, it shall appear that said road has been constructed in accordance with the provisions of its charter, and of the general laws of the state in force at the time regulating railroads, thereupon it shall be the duty of the Commissioner of the General Land Office to issue to said company patents for the odd sections surveyed in pursuance of the second and third sections of this act; but in case said lands, or any part thereof, shall not have been surveyed at the time said section is completed, then it shall be the duty of said commissioner to issue to said company certificates of 640 acres

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each, equal to sixteen sections per mile of road as completed, whereupon said company may apply to the district surveyor of any land district in this state to survey any quantity of vacant land subject to location and entry in such district, not to exceed twice the quantity of certificates so issued, which surveys shall be made, numbered and colored as directed in the third section of this act, and upon the return of the field-notes and map or maps of such surveys to the General Land Office, and the certificates so issued it shall be the duty of the commissioner to issue to said company patents for the odd sections of said surveys; provided, that in case the surveys are not applied for before the completion of any section of road, it shall not be necessary to deposit with the Treasurer a bond as required in the second section of this act.

Sec. 7. The fractional sections containing more than 320 acres shall be regarded as whole sections; and two fractional sections, each containing less than 320 acres, shall be taken as a whole section under the provisions of this act: and all the alternate or even sections shall be reserved to the use of the state until appropriated by law.

Sec. 8. That surveys under the provisions of this act may be made by persons employed by the company, and the field-notes may be deposited with the Commissioner of the General Land Office without being recorded in the office of the district surveyor; provided, that the state in no case shall be liable for surveying any part of said lands, nor shall any company pay for the fees of patenting the odd sections as herein provided.

Sec. 9. That any railroad company in this state acquiring lands or other real estate by virtue of the provisions of this act, or by virtue of the provisions of any other act or charter enacted by the Legislature of the State of Texas, by purchase, donation or otherwise, shall proceed to alienate the same except so far as may be necessary to the mainten-

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ance and running of said road, in six, eight, ten and twelve years ; that is, one-fourth shall be alienated in six years, one-fourth in eight years and one-fourth in twelve years from the time of acquiring such lands or real estate, in such manner that the whole of such lands or real estate shall pass out of the hands of such company within twelve years from the date of its acquisition ; provided, moreover, that said lands and real estate shall in no instance be alienated to any other corporation, except so far as may be necessary for the proper uses and the conduction of the business of such corporation.

SEC. 10. That if any company should neglect or fail to alienate its lands or real estate, as herein directed, evidences of which alienations said company shall cause to be filed with the Secretary of State, it shall be the duty of that officer to notify the Comptroller of Public Accounts and Commissioner of the General Land Office of such failure to alienate, whereupon the Commissioner shall furnish the Comptroller with a list of the lands acquired by said company under this or any other act of the Legislature of the state, and the dates at which such lands were acquired ; and the Secretary of State shall also furnish the Comptroller with a schedule of the lands owned and alienated by said company, as the same appears from the last annual return made to his office by said company, in pursuance of the general law of the state regulating railroad companies ; and it shall be the duty of the Comptroller of Public Accounts, immediately upon receiving said returns, to cause to be advertised in the newspapers in the city of Austin for sale, sixty days after such advertisement, the lands herein directed to be alienated, proceeding in the order in which said lands and real estate were granted or deeded to said company ; and after deducting all necessary expenses of the sale, the balance shall be deposited with the Treasurer to the credit of said company.

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SEC. 11. That all the alternate or even sections of land surveyed in pursuance of the provisions of this act, or of any other act of the Legislature of this State, donating lands to any railroad company, shall be reserved to the use of the state, and not liable to locations, entries or pre-emption privileges until otherwise provided by law.

SEC. 12. That the provisions of this act shall not extend to any company receiving from the state a grant of more than sixteen sections of land, nor to any company for more than a single track road, with the necessary turnouts; and any company now entitled by law to receive a grant of eight sections of land per mile for the construction of any railroad, accepting the provisions of this act, shall not be entitled to receive any grant of land for any branch road; provided, this act shall not be so construed as to give to any company now entitled by law to receive eight sections of land, more than eight additional sections; provided, that no person or company shall receive any donation or benefit under the provisions of this act, unless they shall construct and complete at least twenty-five miles of the road contemplated by their charter within two years after the passage of this act; and such donations shall be discontinued in every case where the company or companies shall not construct and complete at least twenty-five miles of the road contemplated by their charter, each year after the construction of said first-mentioned twenty-five miles of road; and further provided that the proviso herein contained shall not extend to any railroad, the terminus of which is not fixed on the Gulf coast, the Bays thereof, or on Buffalo Bayou, and that nothing in this section shall be so construed as to extend the duration of any existing charter; and further provided, that the certificates for land issued under the provisions of this act shall not be located upon any land surveyed or titled, previous to the passage of this act; and further provided,

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that this act shall continue in force for the term of ten years from the time it shall take effect and no longer.

SEC. 13. That no railroad hereafter to be built shall be entitled to receive the additional sections of land herein granted, unless the railings of such road shall weigh at least fifty-four pounds to the yard.

Approved January 30, 1854.

Note: The above act is published as Chapter XV, pages 11–15 General Laws passed by the Fifth Legislature of Texas.

AN ACT supplemental to "An Act to encourage the construction of Railroads in Texas, by donations of land."

SECTION 1. *Be it enacted by the Legislature of the State of Texas*, That no railroad company availing itself of the provisions of the act to which this is a supplement, shall receive more than sixteen sections of land to the mile by virtue of said act, or any *proviso* therein contained. And no road benefited by said act shall receive any donation of land under its charter, or under the act to which this is a supplement, for any work not done within ten years after the passage of this act; and this act shall be in force at the same time that the act to which this is a supplement shall take effect.

Approved January 30, 1854.

Note: The above act is published as Chapter XVI, page 16 General Laws passed by the Fifth Legislature of the of the State of Texas.

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AN ACT to amend An Act Incorporating the Buffalo Bayou, Brazos and Colorado Railroad Company, approved February the eleventh, eighteen hundred and fifty.

SECTION 1. *Be it enacted by the Legislature of the State of Texas*, That the "Buffalo Bayou, Brazos and Colorado Railroad Company" shall be entitled to all the rights, privileges and benefits accruing from any general law or laws that have or may hereafter be passed by this state to encourage the constructing of railroads, in the same manner and to the same extent as if the gauge of said road was the same now fixed or which may be hereafter fixed upon by this state.

Approved February 4, 1854.

Note: The above act is not published as Chapter XLV, page 69 of the Special Laws passed by the Fifth Legislature of Texas.

AN ACT supplemental to "An Act to amend an Act to incorporate the Buffalo Bayou, Brazos and Colorado Railroad Company," passed at the present session of the Legislature.

SECTION 1. *Be it enacted by the Legislature of the State of Texas*, That if the Buffalo Bayou, Brazos & Colorado Railroad Company shall avail themselves of the act to which this is a supplement, or accept any donation of land from the state, they shall not be entitled to receive any such donation from the state under the provisions of this law, or any law that has heretofore been passed for their benefit, for any portion of their road which shall not be completed and ready for use within ten years from and after the passage of this act; Provided, that said company shall restrict them-

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selves to the following route, viz: to an extension of their existing road to Austin, in the county of Travis, crossing the Brazos river at any point between the town of Richmond in Fort Bend county, and Hidalgo Falls, in Washington county, and with the right of extending their road from Austin to connect with any road running north of Austin towards the Pacific Ocean. Provided, such connections be made between the ninety-sixth and ninety-eighth parallels of longitude; and provided, further, that said company shall have no right to build branches from their main road.

Sec. 2. This act shall take effect from and after its passage.

Approved February 4, 1854.

Note: The above act is published as Chapter XLVI, page 70 of the Special Laws passed by the Fifth Legislature of Texas.

AN ACT for the relief of companies incorporated for purposes of Internal Improvement, by allowing them further time for the performance on account of the pending War.

Section 1. *Be it enacted by the Legislature of the State of Texas*, That the time of the continuance of the present war between the Confederate States and the United States of America, shall not be computed against Internal Improvement Company in reckoning the period allowed them in their charters, by any law, general or special, for the completion of any work contracted by them to do; *provided*, That this act shall not be so construed as to revive any charter of a Railroad Company which has been forfeited prior to the 21st day of May, 1861.

Sec. 2. The President and directors of the Houston and

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Texas Central Railroad Company shall, before the provisions of this act shall extend to the benefits of said company, pass a resolution restoring the original *bona fide* stockholders of said company—those who have paid for their stock—to all the rights, privileges and immunities to which they were entitled previous to, and of which they were divested by the sale of the said road to W. J. Hutchins and others, and shall forward to the Governor of the state a copy of said resolution, signed by the President and countersigned by the Secretary or Treasurer, under the seal of said company, and said company shall not have the power to repeal said resolution so as to defeat the object of this act; *provided*, that if the original *bona fide* stockholders should fail to pay into the treasury of said company ten per cent. upon their said stock, on or before the expiration of the extension of time provided in this act for the fulfillment of the charter obligations of said company to the state, then and in that case said stockholders shall forfeit all their rights, privileges and property interests as stockholders in said road.

Sec. 3. The President and directors of any railroad company in this state shall not have the power to sell out stockholders in said company by virtue of any law now in force, until the expiration of the time of extension provided in this act for the fulfillment of its charter obligations to the state.

Sec. 4. The provisions of any law, contrary to those of this act, shall have no force or effect so far as they may conflict with the provisions of this act, and this act shall take effect and be in force from and after its passage.

Approved January 11th, 1862.

Note: The above act is published as Chapter LXII, pages 43–44, General Laws passed by regular session Ninth Legislature of Texas.

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AN ACT for the relief of Railroad Companies:

SECTION 1. *Be it enacted by the Legislature of the State of Texas*, That the failure of any chartered railroad company in this state to complete any section or fraction of section of its road, as required by the existing laws, shall not operate as a forfeiture of its charter or of the lands to which said company would be entitled under the provisions of an act, entitled "An Act to encourage the construction of railroads in Texas, by donations of land," approved January 30th, 1854, and the several acts supplementary thereto, provided said company shall complete such section or fraction of section as would entitle it to donations of land under existing laws within two years after the close of the present war between the Confederate States and the United States of America.

SEC. 2. That during the time named in the first section of this act, any such company having completed and in running order, twenty-five miles of its road, shall be entitled to receive from the state a grant of sixteen sections of land for every mile of road constructed, or which may hereafter be constructed and put in running order, beyond the said section of twenty-five miles; *provided*, that no company shall receive from the state more than sixteen sections of land per mile for any portion of its road now or hereafter constructed, unless otherwise provided by its charter, or special provision of some law.

SEC. 3. That upon the application of any company which may have completed any portion of its road beyond the said section of twenty-five miles, the Commissioner of the General Land Office shall issue to said company certificates for the lands to which it may be entitled under the provisions of this act, and which may have been designated, and caused to be surveyed by said company in accordance with existing laws; *provided*, that this act shall not be so construed as to

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conflict with, or in any manner alter or change the provisions of an act entitled "An Act for the relief of the Memphis and El Paso Railroad Company, and all other railroad companies," passed March 20th, 1861.

SEC. 4. That the lands to which any such company may now be entitled in pursuance of this act may be designated, surveyed and patented at any time within two years after the passage of this act; and the President and Directors of the Houston and Texas Central Railroad Company shall, before the provisions of this act shall extend to the benefit of said company, pass a resolution restoring the original *bona fide* stockholders of said company—those who have paid for stock—to all the rights, privileges and immunities to which they were entitled previous to and of which they were divested by the sale of said road to W. J. Hutchins and others, and shall forward to the Governor of the state a copy of said resolution, signed by the President, and countersigned by the Secretary or Treasurer, under the seal of said company; and said company shall not have the power to repeal said resolution so as to defeat the object of this act; provided, that if the said original *bona fide* stockholders should fail to pay into the Treasury of said company ten per cent. upon their said stock on or before the expiration of the extension of time provided in this act for railroad companies, to fulfill their charter obligations to the state, then, and in that case, said stockholders shall forfeit all their rights, privileges and property interests as stockholders in said road.

SEC. 5. That this act take effect and be in force from and after its passage.

Approved January 11th, 1862.

Note: The above act is published as Chapter LXIX, pages 46–47 General Laws passed at regular session Ninth Legislature of Texas.

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AN ACT for the benefit of Railroad Companies.

SECTION 1. *Be it enacted by the Legislature of the State of Texas,* That the grant of sixteen sections of land to the miles to railroad companies, heretofore or hereafter constructing railroads in Texas, shall be extended, under the same restrictions and limitations heretofore provided by law, for ten years after the passage of this Act.

SEC. 2. That the time for the alienation of the lands acquired by railroad companies, heretofore, shall be extended to fourteen for the alienation of one-half of such lands, and to twenty-one years for the alienation of the other half; and, in the event such alienation does not take place, the said lands shall be forfeited to the state; and companies hereafter acquiring lands shall alienate the same in fourteen and twenty-one years from the date of acquisition, under a like penalty of forfeiture.

SEC. 3. That the benefits of this Act shall not apply to any company hereafter that avails itself of the provisions of the 2d, 3d, 4th and 5th sections of an Act entitled "An Act to encourage the construction of railroads in Texas," approved January 30, 1854, or of the act supplementary thereto, approved February 16th, 1858.

SEC. 4. That it is not intended by the preceding section to interfere with or impair the rights which have been heretofore acquired by companies under laws heretofore in force but to preclude companies from hereafter taking advantage of the provisions of sections 2, 3, 4, and 5 of the Act of January 30th, 1854, and the supplementary act thereto of 16th February, 1858; *provided,* that all tap roads over twenty-five miles long shall be entitled to the benefits of this act.

SEC. 5. That this act be in force from its passage.

Approved November 13, 1866.

Note: The above act is published as Chapter CLXXIV, page 212, General Laws Eleventh Legislature of Texas.

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AN ACT Supplementary to the Act to incorporate the Buffalo Bayou, Brazos and Colorado Railway Company, and to the other Special Acts relating to said company.

WHEREAS, on the seventh July, 1868, "the road-bed, track, franchise, and chartered rights and privileges" of the Buffalo Bayou Brazos & Colorado Railway Company were sold on executions issued on judgments against said company; and on the twenty-fourth January, 1870, the railroad of said company from Harrisburg to Alleyton, and its franchise, rights and other property appertaining thereto, were sold under the provisions of a mortgage or deed of trust made by said company on the first November, 1860, all of which appears of record: and,

WHEREAS, The act of December 19, 1857, "supplementary to and amendatory of an act to regulate railroad companies" provides that the purchasers at such sales, and their associates "shall be entitled to have and exercise all the powers, privileges and franchises granted to" the company sold out "by its charter, or by virtue of the general laws of this state," and "shall be deemed and taken to be the true owners of said charter and corporators under the same, and vested with all the powers, rights, privileges and benefits thereof;" and,

WHEREAS, the purchasers at said sales, and their associates, have formed a new company under said old name, and have expended large sums of money in the reconstruction of said railroad, in the purchase and completion of the Columbus Tap Railroad, and the bridge of the Brazos Iron Bridge Company over the Brazos river at Richmond; and,

WHEREAS, said new company desires to be distinguished by name from said "sold out" company, to consolidate its property, and to extend said line of railroad; therefore,

SECTION 1. *Be it enacted by the Legislature of the State of Texas*, That the new company heretofore known as the

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Buffalo Bayou, Brazos & Colorado Railway Company, referred to in the preamble of this act, shall be hereafter known by the corporate name of "The Galveston, Harrisburg & San Antonio Railway Company," and may alter its seal to conform to its name; provided, that said new company shall be liable to the State of Texas for the debt of said "sold out" company, for loans made to the latter company from the special school fund, in the same manner and to the same extent as said "sold out" company was liable; and that said change of name shall in no respect impair or affect said liability, or the existing lien or mortgage of the state upon the railroad of said company as security for said loans. Also, provided, that said change of name shall in no respect impair or affect any of the obligations of said new company to other parties, or the obligations of other parties to said new company; all of which may be enforced by or against said new company under said new name.

SEC. 2. That said railroad company may avoid the sale of its railroad for its indebtedness to the state for loans from the special school fund, and for the non-payment of principal and interest, by the payment into the Treasury of the state, on the first day of November, A. D. 1870, of six months' interest on the aggregate amount due on account of said loans, principal and interest, as said aggregate amount stood on the first day of May, A. D. 1870, and by the payment in addition, on said first day of November, of one per cent. upon said aggregate amount, to be applied towards the sinking fund provided for by existing laws in respect to said loans, and by continuing to pay into the Treasury of the state six months' interest and one per cent. on account of said sinking fund semi-annually thereafter, to-wit, on the first day of May and November, in each year; provided that in case of failure to comply with any payment required under this section, the Governor shall sell the said road under the regulations provided in the law of August 13, 1856.

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SEC. 3. The said new company is hereby authorized to extend the existing line of railroad owned and operated by said company from Columbus, in Colorado county, to San Antonio, in the county of Bexar, within four years from the passage of this act, and thence to a terminus on the Rio Grande, by such route as the directors shall deem most feasible, with a branch from the most suitable point to New Branufels, in Comal county, within four years from the passage of this act; or said new company may connect with any line of railroad that may be constructed or under construction to San Antonio or the Rio Grande, south of the latitude of the City of Austin and the Colorado river, instead of building its own line beyond the point of such connection; and may build to and connect with any line of railroad that may be constructed, or under construction, and designed to form part of any railroad line to the Pacific, south of the thirty-fifth parallel of latitude; nothing herein being so construed as to exclude said new company from the right to construct also any part of the line up the Colorado valley formerly designated by said "sold out" company as its route under the provisions of the eleventh section of the act of December 19, 1857; provided, that if the said road shall not be completed within the time specified in this section, then this charter shall be forfeited.

SEC. 4. That said new company may consolidate with its existing railroad the bridge built by the Brazos Iron Bridge Company over the Brazos River at Richmond, and the five miles of railroad, more or less, including side-tracks, from the town of Alleyton to the town of Columbus, built under the charter granted in the year 1860 to the Columbus Tap Railroad Company, including the bridge over the Colorado river at Columbus, together with all the franchises, rights, fixtures and appurtenances of, or upon any of the same, and may construct and maintain telegraphs along its lines.

SEC. 5. That said new company may issue its bonds,

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under seal or otherwise, and secure the same by a mortgage or mortgages upon its said consolidated line of railroad, or any part of the same and any such mortgage may be so expressed as to include and cover, as said company shall construct the same, the lines of railroad it may construct in extension of its existing line, together with all the franchises and rights, bridges, depots, fixtures, equipments machinery, and the appurtenances and property of said railroad and of said company, of every kind, or any part thereof, whether constructed or acquired before or after the execution of said mortgage, and with provision for a sinking fnnd sufficient for the extinguishment at their maturity of the principal of the bonds secured thereby. That the amount of bonds that may at any time be outstanding under any such mortgage shall not exceed twenty thousand dollars for each mile of single main track, with the necessary turnouts included in such mortgage, and completed and in running order. That all the bonds secured by any such mortgage shall be on an equality in respect to the benefits of the same, shall be of the same form and tenor, except that they may be of different dates, and for different amounts, and shall mature at the same time, in not more than fifty years from the date of those of said bonds which shall be first issued. That said bonds shall bear interest at such rates, not exceeding eight per cent. per annum, payable semi-annually; both principal and interest shall be payable in gold, or other lawful currency of the United States, at the places named in the bonds and coupons, and, with said mortgage or mortgages, may be otherwise in such form and contain such stipulations not inconsistent with the provisions of this act as the directors shall think proper to embody therein.

SEC. 6. That said new company may issue such other bonds, and sscure them by other mortgage or mortgages on its railroad, franchises and property, or any part of the

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same, subsequent and subject to the mortgages hereinbefore provided for, as the interests of said company may require. Any bonds lawfully issued by said new company may be disposed of by the directors on such terms as they think proper.

SEC. 7. That the issue of any of the bonds, and the execution of any mortgage provided for in the two preceding sections shall not impair, or in any way affect, the lien or mortgage held by the state upon the railroad, franchises, rights or property of said new company as security for loans made to said "sold out" company as aforesaid, or any of the rights of the state in respect to the same. And if any such mortgage is made whilst said lien or mortgage of the state exists, it shall be made expressly subject thereto.

SEC. 8. That in case it shall be made to appear to the Government that there has not been issued upon said railroad the full quantity of sixteen sections of land scrip for every mile of the same that was constructed and put in running order prior to the war of the late rebellion, in accordance with the provisions of the charter and of the general laws of the state in force at the time regulating railroads, there shall be issued to said new company said scrip to the amount of any such deficiency, notwithstanding said railroad may not have been constructed and completed at the rate of twenty-five miles each year after the construction of the first twenty-five miles, as provided in the act of January 30, 1854.

SEC. 9. That meetings of said new company and of the directors may, when desirable, be held at an office of said company in Boston Massachusetts, as well as at the "principal office" of the company in Texas; provided, that the votes passed at meetings in Boston shall be, within thirty days therefrom, spread upon the records, which shall be kept at the "principal office" in Texas. That a majority of the directors and the President and Treasurer shall not be

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required to reside in this state so long as the Vice-President and assistant treasurer reside therein; and directors may vote by proxy under such regulations as the by-laws shall prescribe.

Sec. 10. That said new company may make a terminus of said railroad at the city of Houston, or change the present terminus from Harrisburg to Houston, and for that purpose may acquire, by agreement with the owners, any part of the Houston Tap and Brazoria Railroad; and said company may make a terminus at the city of Galveston, arranging with any railroad running to Galveston for a third rail thereon, or other connection therewith, or extend its own line thereto, if preferable.

Sec. 11. That said new company shall be entitled to the same or similar rights and relief, except state aid in bonds, granted to or provided for any other railroad company by the Legislature, and upon the same or similar terms and conditions, so far as such rights or relief are, in their charter, applicable to said company or its lines, or lines of railroad.

Sec. 12. That nothing in this act shall be so construed as to deprive any party interested of the right to disprove any assumed fact stated in the preamble; provided, that nothing in this act contained shall be construed as reviving or renewing any land grant to said company for road hereafter to be completed, which it does not possess by existing law.

Sec. 13. That this act shall take effect from and after its passage.

Passed July 27, 1870.

Note: The above act is published as Chapter XXVIII, Special Laws Called Session of Twelfth Legislature of Texas.

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JOINT RESOLUTION proposing an amendment to Section 6 of Article ten of the Constitution of the State of Texas.

Be it resolved by the Legislature of the State of Texas, That Section six of Article ten of the Constitution of the State of Texas be so amended as hereafter to read and be as follows :

" SECTION 6. The Legislature shall not hereafter grant lands, except for purposes of internal improvement, to any person or persons, nor shall any certificate for land be sold at the Land Office except to actual settlers upon the same, and in lots not exceeding one hundred and sixty acres; *provided*, that the Legislature shall not grant out of the public domain more than twenty sections of land for each mile of completed work in aid of the construction of which land may be granted; *and provided further*, that nothing in the foregoing proviso shall affect any rights granted or secured by laws passed prior to the final adoption of this amendment."

Passed May 17, 1871.

Note: The above resolution is published as Chapter XXVI, page 160 of the Joint Resolution passed at the first session of the Twelfth Legislature of Texas.

JOINT RESOLUTION ratifying an amendment to Section Six of Article Ten of the Constitution of the State of Texas, proposed by Joint Resolution of the Legislature of the State of Texas, passed May 17th, 1871.

WHEREAS, The Legislature of the State of Texas, on the 17th day of May, 1871, passed by a two-third vote, a

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joint resolution proposing an amendment to Section six of Article ten of the Constitution of the State of Texas; and,

WHEREAS, Said proposed amendment was submitted to the consideration and vote of the people at the last general election held in this state on the 5th, 6th, 7th and 8th days of November, A. D. 1872; and,

WHEREAS, It appears that a majority of those voting upon said proposed amendment voted in favor of said amendment; therefore,

Be it resolved by the Legislature of the State of Texas, That the said amendment to Section six of Article ten of the Constitution of the State of Texas, which is as follows: "Sec. 6. The Legislature of the State of Texas shall not hereafter grant lands except for purposes of internal improvement, to any person or persons, nor shall any certificate for land be sold at the Land Office except to actual settlers upon the same, and in lots not exceeding one hundred and sixty acres; *provided*, that the Legislature shall not grant, out of the public domain, more than twenty sections of land for each mile of completed work, in aid of the construction of which land may be granted; *and provided further*, that nothing in the foregoing proviso shall affect any rights granted or secured by laws passed prior to the final adoption of this amendment;" be and the same is hereby ratified as an amendment to the Constitution of the State of Texas.

SEC. 2. That this resolution take effect and be in force from and after its passage.

Passed March 19th, 1873.

Note: The above is published as Joint Resolution No. 7, pages 224–225 General Laws passed by the Thirteenth Legislature of Texas.

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Section 6, Article X of the Constitution adopted in 1869–70 reads as follows:

"SECTION 6. The Legislature shall not hereafter grant lands to any person or persons, nor shall any certificates for land be sold at the Land Office except to actual settlers upon the same in lots not exceeding one hundred and sixty acres."

AN ACT to encourage the construction of railroads in Texas by donations of land.

SECTION 1. *Be it enacted by the Legislature of the State of Texas*, That any railroad company heretofore chartered, or which may be hereafter organized under the general laws of this state, shall, upon the completion of a section of ten miles or more of its road, be entitled to receive, and there is hereby granted to every such railroad, from the state, sixteen sections of land for every mile of its road so completed and put in good running order; *provided*, that no company whose road is of less than three feet gauge shall be entitled to receive any grant of lands under this section; *provided, however*, that companies constructing railroads on the prismoidal plan shall be entitled to eight sections of land to the mile on the same terms as other roads; *provided, further*, that this act shall not be construed to renew or continue any right to companies who have failed or may fail to comply with the terms of their charters, with reference to the completion of portions of their roads in stated times; *provided further*, that the provisions of this act shall not be so construed as to grant the aid herein provided for to any railroad that has already received or is otherwise entitled to receive aid from the state to the amount of sixteen sections of land to the mile.

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SEC. 2. Any railroad company having completed and put in good running order a section of ten miles or more of its road, may give notice of the same to the Governor, whose duty it shall be to appoint some skillful engineer, if there be no State Engineer, to examine said section of road, and if, upon the report of said engineer under oath, it shall appear that said road is substantially built, and fully equipped for the transportation of both passengers and freight, and that the same is operated by steam, and is constructed of iron rails of not less than thirty pounds to the lineal yard; *provided*, that rails for prismoidal roads shall not weigh less than twenty-two pounds to the lineal yard, and has been constructed in accordance with the provisions of its charter, or of the general laws under which it may be constructed, and of the general laws in force regulating railroads; thereupon it shall be the duty of the Commissioner of the General Land Office to issue to said company certificates of six hundred and forty acres of land each, equal to sixteen sections to the mile of road so completed; whereupon said company may apply to the district surveyor of any land district in this state to survey such lands out of any of the unappropriated public land in his district: said surveys shall be made in alternate sections, or half sections, as nearly square as practicable, one section for the company, and one for the state, for the benefit of the public school fund, a map of all such surveys shall be returned with the field notes to the General Land Office, when the Commissioner of the General Land Office shall number contiguous surveys with even and odd numbers, and shall issue to the company patents for the odd sections of said surveys.

SEC. 3. All lands acquired by railroad companies under this act shall be alienated by said companies, one-half in six years and one-half in twelve years from the issuance of patents to the same, and all lands so acquired by railroad companies, and not alienated as herein required, shall be for-

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feited to the state and become a part of the public domain, liable to location and survey as other unappropriated lands; *provided further*, that the state shall retain the right to regulate the rates of freight and passengers' fare by general law on all roads accepting the grant of land under this act.

SEC. 4. That there being no law authorizing state aid in construction of railroads now in force, an imperative public necessity and an emergency exist for the immediate passage of this act, and it is hereby declared that this act take effect and be in force from and after its passage.

Approved August 16, 1876.

Takes effect ninety days after adjournment.

Note: The above act is published as Chapter CI, pages 153–154 General Laws passed by the Fifteenth Legislature of Texas.

AN ACT to repeal all laws granting lands or land certificates to any person, firm, corporation or company for the construction of railroads, canals and ditches.

SECTION 1. *Be it enacted by the Legislature of the State of Texas,* That all laws or parts of laws now in force granting lands or land certificates to any person, firm, corporation or company for the construction of railroads, canals and ditches, be and the same are hereby repealed.

SEC. 2. The fact that the public domain subject to location by the owners of these certificates has been exhausted creates an imperative public necesssity and an emergency requiring the constitutional rule that bills be read on three several days in each house be suspended, and the same is therefore suspended; and that this act take effect and be in force from and after its passage, and it is so enacted.

Approved April 22, A. D. 1882.

Takes effect from passage.

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JAN 24 1898
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Sup? Brf. of Lovett, Baker & Blair for P. E.

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Supreme Court of the United States.

OCTOBER TERM, 1897.

No. 421.

THE GALVESTON, HARRISBURG AND SAN ANTONIO RAILWAY COMPANY AND E. P. HILL AND N. N. SHAW, PLAINTIFFS IN ERROR,

vs.

THE STATE OF TEXAS.

SUPPLEMENTAL BRIEF ON BEHALF OF PLAINTIFFS IN ERROR.

R. S. LOVETT,
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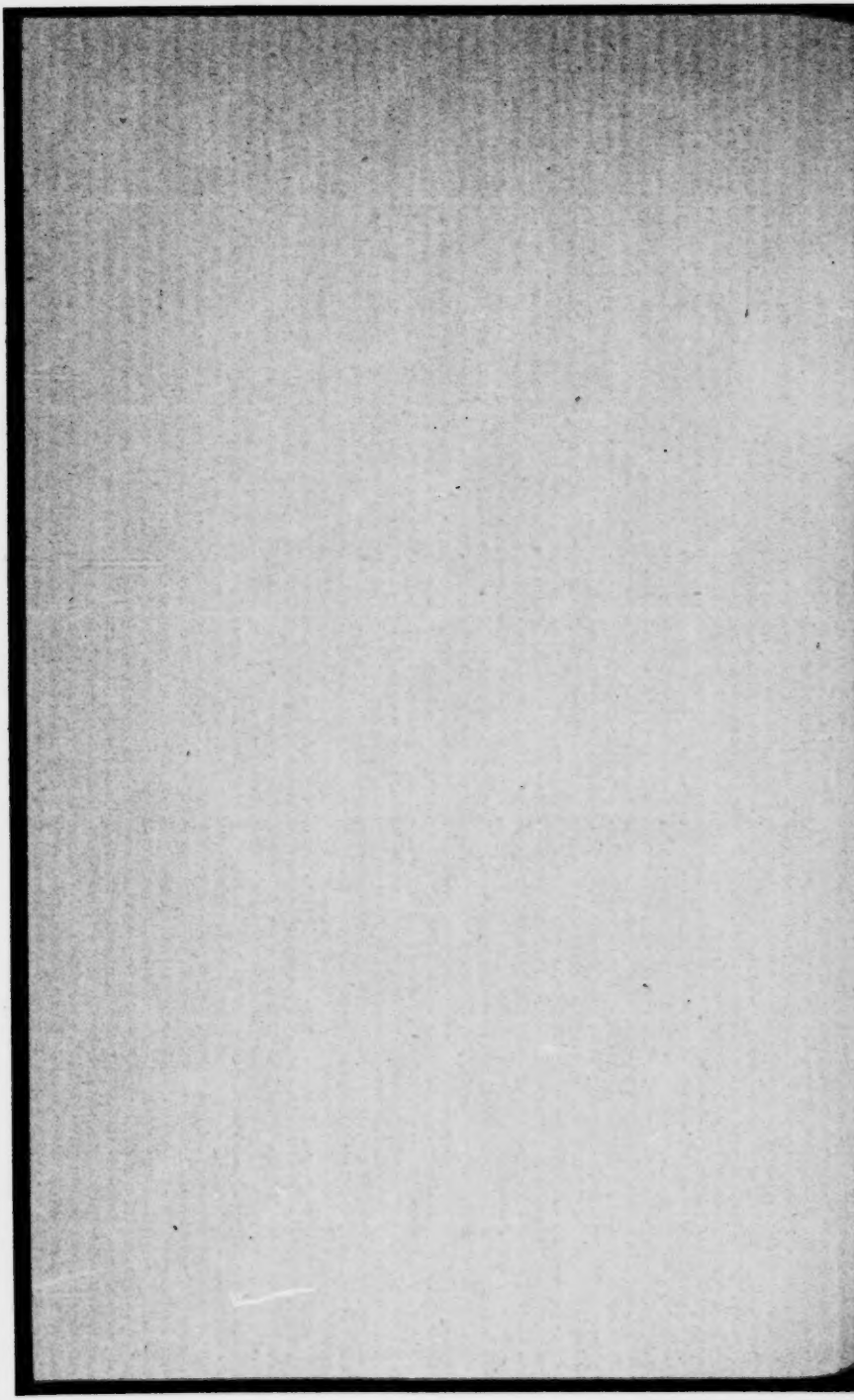

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1897.

No. 421.

THE GALVESTON, HARRISBURG AND SAN ANTONIO RAILWAY COMPANY AND E. P. HILL AND N. N. SHAW, PLAINTIFFS IN ERROR,

vs.

THE STATE OF TEXAS, DEFENDANT IN ERROR.

SUPPLEMENTAL BRIEF ON BEHALF OF PLAINTIFFS IN ERROR.

I.

The statement made in our opening brief that the State supreme court practically concedes the general proposition that legislative authority to a railroad corporation having an existing land grant to change its route would carry with it the right to a land grant for the road constructed along the changed route is of prime importance, and we desire to submit some additional observations upon that point.

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The words of the supreme court are:

"It may be conceded that, so long as the general law which granted the privileges of acquiring lands remained in force, and so long as no constitutional inhibition stood in the way, legislative authority to a company to change the line to be constructed should be construed to carry with it the privilege of earning lands for the construction of the new line." (R., p. 115.)

Transforming this clause from a general to a particular statement, we have the following declaration of the court: If it were not for the inhibition in section 6 of article 10 of the Constitution of 1869, the special act of July 27, 1870, authorizing the plaintiff in error to change its line from a route via Austin to one via San Antonio, would carry with it the privilege of earning lands for the construction of the road between Columbus and San Antonio.

Stated more briefly and in another form, the State court concedes that, if the special act authorizing the change of route had been adopted in 1868 instead of in 1870, the plaintiff in error would have been entitled to a land grant for its line constructed along the changed route. Why? Because its existing land grant was of such a nature that it was not destroyed by a change of route, but attached to the new route.

We submit, therefore, that we have the authority of the State supreme court, or at least its concession in support of the proposition, that a railroad corporation entitled to the land grant offered in the general act of January 30, 1854, although its road is restricted to a certain route, has, nevertheless, a right of such a nature that when the restriction as to route is removed by subsequent legislation and a new

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route authorized, its right to a land grant accompanies and extends to the changed route. Now, the Buffalo Bayou, Brazos and Colorado Railroad Company was such a corporation and had such a right to a land grant, which right passed unimpaired to the plaintiff in error through the purchasers of the sold-out company. This right antedated the constitution of 1869. To construe that constitution as interfering with this right, as curtailing its scope and operation so as to prevent it from extending, *ex proprio vigore*, to the changed route, is to render the constitution amenable to the objection of impairing and abridging the right in question.

In our first brief we combatted the contention that when a previously existing corporation is authorized by an act of the legislature to change its route it can enjoy with reference to the altered route only such rights and franchises as could be conferred by the legislature which authorized the variation in route. We referred to that contention as the theory upon which the State court reached its conclusion. The reference is not strictly accurate. The theory of the decision of the State court has been stated above, and it is that although the land grant of plaintiff in error existing prior to 1870 was of such a nature that it would not be destroyed by a change of route, but would attach to the new route, yet that the effect of the prohibition in the constitution of 1869 was to change the nature of our existing land-grant rights, to attach them indissolubly to whatever was the then designated route of the road, and to deprive them of the capacity to accompany a change of route. As a land grant which will accompany a change of route is more valuable than a land grant which will be lost by a change of route, the constitution of 1869, as construed

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by the State court, has impaired and abridged our land-grant rights within the prohibition of the Federal Constitution.

II.

We desire to state more fully the nature of the Federal question involved in the second branch of the defense discussed under heading II of our original brief. Before we can urge as an equitable defense to this suit our rights and claims growing out of the construction of the portion of the railroad between San Antonio and El Paso, we must show their existence and the unlawful repudiation thereof by the State. Whether or not they exist and whether or not they have been unconstitutionally repudiated depend upon the correctness of the charge we make that the repealing act of April 22, 1882, is violative of the Federal Constitution, in that it impairs the obligation of the contract growing out of the State's offer of aid in the line, the railroad company's acceptance thereof, and the construction of its road in reliance thereon.

We accordingly asked the State court to hold that our right to a land grant for the construction of the portion of the road in question was a contract and a vested right within the protection of the Federal Constitution; that the repealing act of 1882 impaired the same within the prohibition of that Constitution, and that the act of 1882 was accordingly null and void.

The State court not only failed to so hold, but, as we construe the opinion, it rested its decision against us on this branch of the case upon the existence of a condition of things for which the act of 1882 was solely responsible, thus

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giving effect to that law. To decide a case against a litigant by reason of a state of facts or a condition of things created or brought about by a law which he charges to be unconstitutional is tantamount to giving effect to that law; and so, to decide a case against him for failure to do something that he is prevented from doing by a law which, for that reason, he claims to be contrary to the Federal Constitution, is also equivalent to deciding the Federal question against him.

The decision of the State court on this branch of the case is found in the brief answer of the State supreme court to question 3 of the certified questions (R. p. 117). In certifying this question the court of appeals stated that the State had refused to issue land certificates for the road constructed westward from San Antonio, the governor refusing the application for inspection on the ground that the laws granting certificates had been repealed. (R., p. 110; see also Conclusions of Fact, R. p. 125, where the correct mileage of the road between San Antonio and El Paso is stated to be 623.14 miles.)

The answer of the State supreme court to question 3 is as follows:

"Referring to the third question certified by the court of civil appeals, we are of the opinion that it is no defense to an action of the State for the recovery of the lands involved in this suit that the company may have been entitled to certificates for the 163 miles of additional road constructed under the law of 1876. It acquired no title, either legal or equitable, to the lands in controversy by causing them to be surveyed and patented under the certificates granted for the San Antonio extension. To make its rights to lands earned by the additional construction effectual for any purpose it must have procured its certificates and located them upon some por-

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tion of the public domain not reserved from the location of such certificates. Our complicated and ever-varying laws in regard to the appropriation of the public domain have probably given rise to more questions affecting the location of lands than have ever arisen in any other jurisdiction, and yet we know of no case in this court in which it has ever been ruled that the claimant of land against the State under a location made by virtue of a void certificate has any equity in the premises by reason of being the possessor of another valid certificate."

A careful consideration of the foregoing extract from the opinion of the supreme court, which was adopted by the court of appeals, will show that the State court rejected the equitable defense based on plaintiff in error's rights under the act of 1876, because, to use its own words, "to make its right to lands effectual for any purpose it must have procured its certificates and located them upon some portion of the public domain not reserved from the location of such certificates."

The decision quoted above contains four sentences. The first sentence is a mere categorical answer to question 3, and does not give the grounds upon which the question is answered. The second sentence simply states a fact, that no certificates for land earned by the San Antonio extension had been issued or located or surveyed. The third sentence states the real ground of the decision as follows:

"To make its right to land earned by the additional construction effectual for any purpose, it must have procured its certificates and located them upon some portion of the public domain not reserved from the location of such certificates."

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It is true that in the fourth and last sentence the court comments upon the novelty of the equitable defense; but, as it had already decided that without the issuance of land certificates our rights arising from the construction of the San Antonio extension could not be effectual for any purpose, it was unnecessary for it to find any other ground for its decision. While the observation upon the novelty of the contention advanced by plaintiff in error may imply a disinclination on the part of the State court to assent to its correctness, it is far from being equivalent to deciding the case on a ground independent of the Federal question, so as to deprive this court of jurisdiction to review this branch of the case.

We submit that the State court gave affect to the repealing act of April 22, 1882, when it decided the second branch of the defense against plaintiff in error upon a condition of things for which that law was solely responsible, *i. e.*, the failure of plaintiff in error to secure land certificates to evidence its title to lands earned by the construction of the San Antonio extension, and to cause the same to be surveyed and located.

The object of this supplemental argument is to point out more clearly the nature of the Federal question. Our answer to the effect given to the failure to obtain land certificates will be found on pages 145 ffg. of the first brief.

Respectfully submitted.

R. S. Lovett,
Jas. A. Baker,
Joseph Paxton Blair,
Of Counsel for Plaintiffs in Error.

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No. 421.

Brief of Crane for D. C.

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(No. 12,634.)

IN THE SUPREME COURT OF THE UNITED STATES.

October Term, 1897.

No. 421.

THE GALVESTON, HARRISBURG & SAN ANTONIO RAILWAY COMPANY, AND E. P. HILL AND W. N. SHAW, PLAINTIFFS IN ERROR,

vs.

THE STATE OF TEXAS.

IN ERROR TO THE COURT OF CIVIL APPEALS TO THE FOURTH SUPREME JUDICIAL DISTRICT OF THE STATE OF TEXAS.

BRIEF OF DEFENDANT IN ERROR.

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(No. 16,634.)

IN THE SUPREME COURT OF THE UNITED STATES.

October Term, 1897.

No. 421.

THE GALVESTON, HARRISBURG & SAN ANTONIO RAILWAY COMPANY, AND E. P. HILL AND W. N. SHAW, PLAINTIFFS IN ERROR,

vs.

THE STATE OF TEXAS.

IN ERROR TO THE COURT OF CIVIL APPEALS TO THE FOURTH SUPREME JUDICIAL DISTRICT OF THE STATE OF TEXAS.

BRIEF OF DEFENDANT IN ERROR.

This suit was instituted against the Galveston, Harrisburg & San Antonio Railway Company in the District Court of Brewster County, Texas, on the 5th day of January, 1893; the pleading was amended on the 16th day of September, 1893. (Record, p. 1.)

The subject matter of the controversy was 1383 sections of land of 640 acres each, amounting in the aggregate to 879,078$\frac{1}{2}$ acres, situated in various counties in Texas therein named. The land was specifically described by the date of the issuance of the certificates, the county of the location, the survey, block and abstract number, and whether and when patented. The description of the land covers pages 2 to 33 of the record, inclusive.

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It was charged by the plaintiff that each of the certificates by virtue of which the land was claimed by the plaintiffs in error herein were claimed by virtue of land certificates issued by the officers of the State of Texas to the Galveston, Harrisburg & San Antonio Railway Company and the said company had caused them to be located on the land in controversy, and by reason of the location the defendant railway company had entered upon and taken unlawful possession of the land.

That Buffalo Bayou, Brazos & Colorado Railroad Company was chartered by the special act of the legislature of the State of Texas approved February 11th, 1850.

That by the special act of the legislature of the State of Texas approved February 11th, 1854, the said Buffalo Bayou, Brazos & Colorado Railroad Company and this defendant, as its successors, was restricted to an extension of its road to Austin and to a line extending thence to a connection of any road running north of Austin to the Pacific ocean.

The said railroad companies were not entitled to receive any lands for the construction of any road from Columbus to San Antonio and westward for which it received certificates as shown by said exhibits.

That by special act of the legislature of the State of Texas, approved July 27, 1870, the name of the Buffalo Bayou, Brazos & Colorado Railroad Company was changed to the Galveston, Harrisburg & San Antonio Railway Company, the defendant, and under the provisions of said special act the defendant company for the first time was granted the privilege and authority of constructing a railway from San Antonio to Columbus to the Guadalupe bridge and over the line for which certificates were issued as shown in said exhibits; and at that time the Constitution of 1869-70 forbade the legislature from authorizing or granting lands to railway companies for the construction of their roads. No land was granted by said act.

The following recitals from plaintiffs petition state the case in detail:

(5) That there issued to the defendant company 415 certificates by the Commissioner of the General Land Office numbered from 1/1 to 1/415, for a line of road from "the point of junction with the old line of the Buffalo Bayou, Brazos & Colorado

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Railroad Company, at a distance of 493 feet west of the west end of the approach to the bridge over the Colorado river, and ending at the west end of the west approach to the bridge over the west Navidad river, being 24 miles and 3910 feet of main track and 6266 feet of sidings," of which 415 certificates the 315 certificates shown in exhibit "A" form a part. That said section of road was constructed and completed between July 27, 1870, and December 19, 1873.

(6) That there were issued to the defendant company 433 certificates, numbered from 1/416 to 1/858, by the Commissioner of the General Land Office for the construction of the portion of its road "from the western sill of the western approach to the bridge over the West Navidad river, and ending at the center of a red sand stone culvert, it being the first one east of Buck branch, being 27 miles and 47 feet of main track, and 3800 feet of sidings," of which 433 certificates the 407 certificates shown in exhibit "B" form a part.

That said section of road was constructed and completed between July 27, 1870, and June 25, 1874.

(7) That there were issued to the defendant company 308 certificates by the Commissionor of the General Land Office, numbered from 859 to 1166, for the construction of the portion of its road from "a red sand stone culvert, the first one east of Buck's branch, and ending at the turn-table at Luling, being 16 miles and 4610 feet of main track, and one mile and 968 feet of sidings," of which the 308 certificates shown in exhibit "C" form the whole; that said section of road was constructed and completed between July 27, 1870, and January 16, 1875.

(8) That there were issued to the defendant company 192 certificates by the Commissioner of the General Land Office for the construction of the portion of its road between the "station house at Luling, ending at the west end of the siding at Kingsbury, being 60,922½ feet of main track, and 2767 feet of sidings and switches," of which the 91 certificates shown in exhibit "B" form a part.

That this section of road was constructed and completed between July 27, 1870, and July 12, 1875.

(9) That there were issued to the defendant company 262 certificates by the Commissioner of the General Land Office, num-

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bered from 1369 to 1620, for the construction of that portion of its road between "the east pier of the Guadalupe bridge, thence eastward, ending at a point opposite the depot at Kingsbury or the west end of the siding where the last inspection terminated, being 14 miles and 1510 feet of main track, and 2 miles and 686 feet of side track," which 262 certificates are shown in exhibit "E" form the whole.

That said section of road was constructed and completed between July 27, 1870, and October 27, 1876.

(10) Plaintiff further represents and shows to the court that the certificates referred to in said exhibits were issued to the defendant company for the construction of its road from the town of Columbus to the Guadalupe bridge, as heretofore shown, on the basis of sixteen sections per mile, and that every portion of said road was constructed and completed between July 27, 1870, and October 27, 1876.

That at no time during said period was there any law in existence in this State authorizing the issuance of land certificates to the defendant company for main track or sidings, and especially does the plaintiff aver and represent that—that no time during said period was there any law in existence authorizing the issuance of certificates to said company for the construction of its line of road between Columbus and the Guadalupe bridge.

Plaintiff therefore charges that the action of the Commissioner of the General Land Office in issuing and delivering to the defendant company the land certificates, and in permitting them to be located and surveyed upon the lands heretofore described and returned to and filed in the general land office of this State, as well as the issuance of patents shown in said exhibits, were, as before alleged, had and done wholly without authority of law and in plain violation of the Constitution and laws of the State of Texas in force at that time.

(12) That, by reason of the unlawful acts of said company in obtaining and holding the aforesaid certificates and in locating them upon the lands of plaintiff, it holds out to the world that it has some kind of title to said lands and a cloud is cast upon the title of the plaintiff thereto.

Wherefore the said plaintiff prays for judgment, for possession and title to the said lands, for a decree cancelling each of said

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certificates and patents heretofore described and removing the cloud cast upon the title by the location and survey of the same, for damages, costs, and general relief.

On the 6th day of March 1893 the Galveston, Harrisburg & San Antonio Railway Company filed a petition in the District Court of Brewster County, Texas for the removal of the case to the Federal Court and presented a bond with E. P. Hill and W. N. Shaw, as sureties.

The said petition for removal reads as follows:

"*To the Honorable District Judge of Brewster County:*

"The petition of The Galveston, Harrisburg & San Antonio Railway Company, defendant in the above stated cause, respectfully represents that said company is the sole defendant in the above entitled cause, and that the matter and amounts exceed, exclusive of interest and costs, the sum of five thousand dollars.

"That your petitioner is a corporation duly incorporated under the laws of Texas and a resident thereof, having its domicile in said State of Texas.

"That said suit is a suit of a civil nature, being a suit for the recovery of 879,078⅔ acres situated in the counties of Jeff Davis, Presidio, Brewster, Kimble, San Saba, Val Verde, Crockett, McCullough, Pecos, Buchel, Reeves, Schleicher, Sutton and Zavalla Counties.

"(2) Your petitioner further represents that the defendant is a corporation, duly incorporated under the laws of the State of Texas on the 11th day of February, 1850; that said company was invested with the right of constructing, owning, and maintaining a railway commencing at any suitable point on Buffalo Bayou between Lynchburg and Houston, in the County of Harris, and thence running by such course and to such point at or near the Brazos river between the towns of Richmond and Washington inclusive, as said company shall deem most suitable; that the corporate name of said company was The Buffalo Bayou, Brazos and Colorado Railroad Company.

"That the charter of said company was amended on the 31st day of January, 1852, by the legislature, which authorized said railway company to acquire by purchase or gift, any real estate the directors shall think desirable in order to promote or hasten

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the construction of said railroad. They were authorized to borrow money on their bonds or notes at such rates as shall be deemed expedient and mortgage their property to secure the same.

"That on the 29th day of January, 1853, the said railway company was by an amended act of the legislature authorized to locate, construct, own and maintain a railway commencing at a suitable point on Buffalo Bayou, in the county of Harris, and thence running by such course and to such point or points at or near the Brazos and Colorado Rivers or across the same as said company may deem advisable, with the privilege of making, owning and maintaining such branches to said road as they may deem expedient. It is further provided that there shall be granted to said company eight sections of land of 640 acres each for every mile of railroad actually completed and ready for use.

"Again, on the 4th day of February, 1854, the said charter was so amended by an act of the legislature as to entitle it to all the rights, privileges and benefits to accrue from any general law or laws that have or may hereafter be passed in this State to encourage the construction of railroads in the same manner and to the same extent as if the gauge was the same now fixed, or which may be hereafter fixed upon by this State.

"By virtue of another act of the legislature, passed February 4th, 1854, the company was required, in order to avail itself of the act to which the said act is a supplement, to accept any donation of land from the State, they shall not be entitled to receive any such donation under the provisions of this law that has been heretofore passed, on any portion of the road which has not been completed and ready for use within ten years from and after the passage of this act; provided that said company shall restrict themselves to the following route, viz., to an extension of their existing road to Austin, in Travis County, crossing the Brazos River at any point between Richmond, in Fort Bend County, and Hidalgo Falls, in Washington County, and with the right of extending their road from Austin to connect with any road running north of Austin towards the Pacific Ocean, provided such connection between the 96 and 98

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parallels of longitude, and provided, further, that said company shall have no right to build branches from their main line.

"Again, on the 27th day of July, 1870, an act was passed by the legislature supplementary to the act to corporate the Buffalo Bayou, Brazos and Colorado Railroad Company and to the other special acts relating to said company providing for the consolidation of its property and extending of its road. The first section of said supplementary act changes the name of the railway company, so that it should be known thereafter by the corporate name of the Galveston, Harrisburg & San Antonio Railway Company. It was provided by the third section of said act that the said company was authorized to extend the existing line of railway owned and operated by said company from Columbus, in Colorado County, to San Antonio, in the county of Bexar, within four years from the passage of this act, and thence to a terminus on the Rio Grande by such route as the directors shall deem feasible, with a branch from the most suitable point to New Braunfels, in Comal County, within four years from the passage of this act, or said new company may connect with any line of railway that may be constructed or under construction to San Antonio or the Rio Grande south of the latitude of the city of Austin and Colorado River instead of building its own line beyond the point of such connection, and may build to and connect with any line of railway that may be constructed or under construction, and it is not to form any part of any railroad line to the Pacific south of the 25th parallel of latitude, nothing therein being construed as to exclude such new company from the right to construct also any part of the line up the Colorado valley formerly designated by said sold-out company as to its route under the provisions of the 11th section of the act of December 19th, 1857.

"And further provided in section 4 that said new company may consolidate with its existing railroad the bridge built by the Brazos Iron Bridge Company over the Brazos river at Richmond, and the five miles of railroad, more or less, including said tracks from the town of Alleytown to the town of Columbus, built under the charter granted in 1860 to the Columbus Tap Railroad Company, including the bridge over the Colorado river

at Columbus, together with all the franchises, rights, fixtures, appurtenances, etc.

"It is further provided in section 8 of said supplementary act, in case it shall be made to appear to the governor that there has not been issued upon said railroad the full quantity of sixteen sections of land scrip for every mile of same that was constructed and put in running order prior to the war of the late rebellion, in accordance with the provisions of the charter and of the general laws of the State in force at the time regulating railroads, there shall be issued to said new company such scrip to the amount of any such deficiency, notwithstanding the said railroad may not have been constructed and completed at the rate of twenty-five miles each year for the construction of the first twenty-five miles, as provided in the act of January 30, 1854. It is further provided in section 11 that said new company shall be entitled to the same or similar rights and relief, except State aid in bonds or endorsement or guarantee of interest or bonds granted to or provided for any other railroad company by the legislature, and upon the same and similar terms and conditions, so far as such rights and relief are in their character applicable to said new company or its line or lines of railroads.

"Petitioner further represents that the legislature of the State of Texas, on the 13th day of November, 1866, passed an act for the benefit of railroad companies.

"The first section provided that the grant of sixteen sections of land to the mile to railroad companies heretofore or hereafter constructing railroads in Texas shall be extended under the same restrictions and limitations provided by law, for ten years after the passage of the act.

"On the 10th day of March, 1875, the legislature passed a law whereby it granted to the Galveston, Harrisburg & San Antonio Railway Company until the 28th day of January, 1876, to complete said road to the city of San Antonio.

"The Constitution of the State of Texas, article 10, section 6, for 1869, provided as follows: 'The legislature shall not hereafter grant lands to any person, or persons, nor shall any certificates for land be sold at the land office, except to actual settlers upon the same and in lots not exceeding 160 acres.' An

amendment to said provision of the Constitution was voted by the people of Texas by an election held on the 5th, 6th, 7th and 8th days of November, 1872, whereby it was provided that 'the legislature of the State of Texas shall not hereafter grant lands, except for purposes of internal improvements, to any person or persons, nor shall any certificate for land be sold at the land office, except to actual settlers upon the same and in lots not exceeding 160 acres. Provided that the legislature shall not grant out of the public domain more than twenty sections for each mile completed, in aiding in the construction of which land may be granted. And provided, further: that nothing in the foregoing proviso shall affect any rights granted or secured by laws passed prior to the final adoption of this amendment.'

"The said amendment to the Constitution was, by an act of the legislature, approved March 19, 1873.

"That upon the adoption of said amendment to the Constitution, the legislature of Texas proceeded to grant to and provide for a large number of railroad rights to sixteen sections of land to the mile of completed road, as will more fully appear by reference to the special laws of the legislature, and defendant thereupon proceeded to construct its road from Columbus to the Guadalupe river, and did construct the same, relying in good faith upon the promise, agreement and undertaking of the State as fully set forth in said section 11 of the defendant's amended charter of May 27, 1870, and did from time to time receive the lands sued for as said construction proceeded and was completed in accordance with the law.

"On the 16th day of August, 1876, the legislature of the State of Texas passed a general law granting sixteen sections of land for every mile of its road completed and put in running order.

"On the 22nd day of April, 1882, the legislature of the State of Texas passed a law repealing the laws and parts of laws then in force granting land or land certificates to any person, firm or corporation or company for the construction of railroads, canals and ditches.

"Petitioner further represents that in pursuance of said laws and by virtue of the original charter granted to the said railway company, which was and became a contract with the State of Texas, and in pursuance of the law of January 30th, 1854,

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and of the general and special laws of the State of Texas, and all of the charters of the said railway company,—became entitled to the grant of sixteen sections of land per mile of its said completed road, as aforesaid, for which it received the certificates for land and which it located, as fully described in plaintiff's petition.

"Petitioner further represents that its completed road, extending from San Antonio, in Bexar County, to the Rio Grande river in El Paso County, a distance of 623.14 miles; that by reason of the completion of its said road wholly within the time required by law between San Antonio and the Rio Grande river the said defendant became entiled to 9,970.24 additional certificates, calling for six hundred and forty (640) acres of land for each certificate, which would entitle the defendant company to locate 6,380,953.6 acres of land in the State of Texas, which the State declined to recognize.

"By reason of the provisions of section 6, article 10 of the Constitution of the State of Texas, withdrawing the grants of lands to railroad companies and by reason of the act of April 28, 1882, which in its effect has deprived petitioner of its land grants, as aforesaid, which it had earned, and the State of Texas, although requested through her public officers, declined to issue and deliver to said railway company the said 9,970.24 certificates aforesaid, calling for 6,380,953.6 acres of land in the State of Texas, although said railway company had completed and put in running order within the time, under the provisions of the law as aforesaid, its said railroad from Houston in Harris County, to El Paso in El Paso County.

"That the Constitution of 1869 and the act of the legislature in withdrawing the lands and depriving petitioner of its rights thereto was in violation of section 10, article 1, of the Constitution of the United States, which provides that no State shall pass any 'law impairing the obligation of contracts,' and also in violation of section 1, of the 14th amendment of the Constitution of the United States, which provides that 'no State shall deprive any person of life, liberty, or property without due process of law, or deny to any person within its jurisdiction the equal protection of the laws.'

"That said suit, instituted, as aforesaid, against this defendant

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is a suit arising under the laws of the United States, all of which, with other necessary particulars, will more fully appear from the pleadings filed and referred to as a part of this petition in like manner as if therein at length transcribed as well as herein specifically set out.

"Your petitioner further represents that this petition and bond for removal which accompanies the same was filed at or before the time when defendants are required by the laws of the State of Texas and the rule of said court in which this suit is brought to answer or plead to the complaint of plaintiff.

"Your petitioner offers herewith good and sufficient surety for entering in the Circuit Court of the United States for the western district of Texas, on the first day of its next session, a copy of the record in this suit, and for paying all costs that may be awarded by said Circuit Court if said court shall hold that this suit was wrongfully or improperly removed thereto.

"Your petitioner prays this honorable court to proceed no further herein except to make an order for the removal of this cause to the said Circuit Court, and to accept the said surety and bond, and to cause the record herein to be removed into the said Circuit Court of the United States for the Western District of Texas; and your petitioner will ever pray.

"T. D. COBBS, Attorney for Petitioner."

The defendant answered at length, but perhaps it is not necessary to a proper understanding of the case to insert the answer herein. It may be found in the record on pages 43 to 53, inclusive.

It would seem that a copy of the record of the case had been taken to the Federal Court for the Western District of Texas. Record, p. 54.

And that counsel for plaintiff in error objected to trial in the State court and reserved his exceptions thereto. Record, pp. 54, 55 and 56.

The plaintiff filed a supplemental petition covering pages 56 to 62 of the record, inclusive, pleading, among other things, that the defendant company was estopped by a judgment rendered in the District Court of Val Verde County, Texas, between the same parties; i. e., the State of Texas and the defendant company, in which 396,160 acres of land were involved;

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it being held substantially there, that the defendant company was not entitled to the land in this case. Exceptions were filed to this answer; judgment was rendered by the District Court which had overruled protest against the court proceeding to trial on account of the case having been removed to the United States Circuit Court for the Western District of Texas at El Paso. It overruled the general demurrers to plaintiffs' petition and the plea that there was a non-joinder of necessary parties, that George F. Stone was a necessary party to the suit, and rendered judgment in all things for the plaintiff. Record, pp. 63 to 91, inclusive.

The facts as agreed to are as follows:

"I. It is agreed that the defendant company received from the State and located the certificates described in plaintiffs' petition, and that said petition contained a true statement of the number of certificates issued, the number of each certificate, the number of acres, the dates when certificates were issued, the counties in which located, the section of road for which said certificates issued, as well as the number of miles of main track and sidings in each section, and whether the same has been patented, and the date of the patents.

"II. It is further agreed that the defendant railway company begun the construction of the first section of its road, that part of its road for which certificates in this suit were issued, at the point of junction with the old line of the Buffalo Bayou, Brazos & Colorado Railroad, at a distance of 493 feet west of the west approach to the bridge over the Colorado river, and ending at the west end of the west approach over the west Navidad river, subsequent to July 27, 1870, and completed the same December 19, 1873.

"That the second section of defendant company's road from the 'western sill of the western approach to the bridge over the west Navidad river and ending at the center of a red sandstone culvert, the first one east of 'Buck's branch,' was constructed and completed between July 27, 1870, and June 25, 1874.

"That the third section of defendant company's road from 'a red sandstone culvert, the first one east of Buck's branch, and ending at the turntable at Luling,' was constructed and completed between July 27, 1870, and January 16, 1875.

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"That the fourth section of defendant company's road, between 'the station house at Luling and ending at the west ending of the siding at Kingsbury,' was constructed and completed between July 27, 1870, and July 12, 1875.

"That the fifth section of defendant company's road, between 'the east pier of the Guadalupe bridge, thence eastward ending at a point opposite the depot door at Kingsbury or the west end of the siding where the last inspection terminated,' was constructed and completed between July 27, 1870, and October 27, 1876.

"That portion of the road of the defendant company between the Colorado river and San Antonio was completed to San Antonio February 13, 1877.

"III. That said railroad was thereafter constructed and put in running order and operated from said beginning, at the bridge over the Guadalupe river, to El Paso, in El Paso County, being a distance of —— miles.

"IV. It is further agreed that the charters and special laws relating to the defendants' company and relating to grants of land to railroad companies may be used on the trial and in evidence and considered without the necessity of incorporating the same in the statement of facts, as well as all special laws incorporating railroads, and other laws, general and special, granting lands and land certificates for works of internal improvements.

"V. Any other pertinent fact may be introduced by either party on trial.

"VI. There are now remaining and belonging to the State of Texas —— acres of public domain, reserved since 1879 from location by certificates.

"VII. Defendant paid taxes on land sued for continuously since they were located up to the present time, which was received by the State of Texas and by it used as other taxes are used by the State.

"VIII. Defendant paid all fees for locating and surveying the said lands sued for, as well as the same number of alternate sections, known as the even numbered, for the public free school fund, and have paid all surveying fees and all fees to the Commissioner of the General Land Office in respect thereto, and all

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sums of money necessary for its protection and in the way of betterments for the preservation of the same, etc.

"IX. The said certificates for land described in plaintiff's petition were issued to it after the said railway company had completed and after the governor had appointed an engineer to examine the same and report; which engineer did examine the same and report to the governor the condition of said road; and thereupon the governor approved the report, and thereupon the land commissioner issued certificates to said railway company, signed by the Commissioner of the General Land Office, calling for main line and sidings, not separating the sidings from the main line.

"X. At the time the act of January 30, 1854, became a law E. M. Pease was governor of the State of Texas. It was by his approval as such governor that the bill passed the legislature and became a law.

"The first certificates that were issued under the act of January 30, 1854, were authorized and directed to be made by the said E. M. Pease, whose term of office had not then expired.

"These certificates were issued upon a report made by Tipton Walker, engineer, appointed by Governor Pease in pursuance of the provisions of said act, which report bears date, March 24, 1856, and is now on file in the proper department of the State, in the capitol, at Austin.

"In this report said Tipton Walker specially states that the railway company to whom said certificates were issued had completed of its main line a certain number of miles, and also states the length of sidings that had been constructed.

"Upon the receiving of this report the said E. M. Pease, as governor as aforesaid, in a letter addressed to Hon. Stephen Crosby, Commissioner of the General Land Office, under date of March 31, 1856, advised said Crosby, as such commissioner, that the president of the railway company making application for said certificates had notified him (the governor) that said railway company had completed and put in running order a section of twenty-five miles and more of its road; that there being no State engineer, he had appointed under the act of January 30, 1854, Tipton Walker, engineer, to examine said section of road, and that he then enclosed a copy of said report under oath, with

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the affidavit accompanying the same, from the said engineer, wherein said engineer reported that said section, containing, (with the necessary turnouts) 32.12 miles, is constructed in accordance with the provisions of its charter and the general laws of the State in force regulating railroads.

"XI. The various engineers appointed by the different governors to inspect railways as the same were constructed, in their respective reports of inspection to the respective governors stated the number of miles and feet of main track, the number of miles or feet of sidings, the number of miles or feet of bridges, culverts, and tressels, the number of depots, cars, engines, weight of iron, and width and character of track and grade. The action of the respective governors (except Governor Roberts) on said reports were usually in the following words: 'Reports examined and approved'; upon which report and action of the respective governors the Commissioner of the General Land Office issued to the respective companies the certificates for main track and sidings. During the administration of Governor Roberts the reports of the engineers were in substance and form of those made to other governors, but he approved for only the number of miles of main track stated in the reports.

"In one instance during the administration of Governor Davis he approved one report for sidings exclusively, for which certificates were issued in the usual amount per mile. This was also done in one instance by Governor Hubbard, for which certificates issued. On March 13, 1877, Governor Hubbard made the following indorsement on one of his reports: 'This report of Inspector Gray examined and approved for thirty miles of main track and sidings as being made, graded, and in all respects complying with the law.' In many cases patents were issued on said certificates for both main line and turnouts, and in some cases did not separate the quantity of land for main line from the quantity of land for sidings.

"XII. The said railway company has expended large sums of money, as aforesaid, in the work of surveying such lands, locating and correcting the same; also in preserving said railway company and enabling it to perform the duties incumbent upon

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it as a common carrier, and has paid large sums of money by way of taxes to the State of Texas.

"XIII. Said lands have been surveyed in all respects as the law requires land to be surveyed for railway companies by virtue of the donation or grants of land into tracts of six hundred and forty acres, where the same could be done, surveying an equal amount for the benefit of the school fund, the field notes of which were recorded and are now in the proper surveyor's office; that maps, plats and sketches thereof were duly made, which, with the field notes and certificates have been duly returned to the general land office of the State of Texas within the time required by law; and have remained on file in the land office ever since; that the same were duly platted upon the maps of the general land office of the State of Texas and suitably marked as the lands of the railway company. The maps of the same are in use of the land office of the State of Texas now. The odd sections recognized said railway company's lands and maps thereof have been furnished to the county surveyors in all the counties where the said lands are situated and are now in their possession and control, showing said lands platted thereon and recognized by the State of Texas, through the officers, as the lands granted to said defendant railway company.

XVI. The following commissioners have issued land certificates for sidings, as well as for main line, towit: Stevens, Crosby, White, Kuechler and Groos.

During the administration of the following governors land certificates were issued for sidings and main line to the railway companies named as follows:

Gov. E. M. Pease:

To the Buffalo Bayou, Brazos & Colorado R. R.

Gov. H. Runnels:

To the Southern Pacific R. R. Co.
To the San Antonio & Mexican R. R. Co.

Gov. Sam Houston:

To the Southern Pacific Railroad Co.
To the Washington Co. R. R. Co.

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GOV. EDWARD CLARK:

To the Washington Co. R. R. Co.
To the B. B. B. & C. R. R. Co.

GOV. J. W. THROCKMORTON:

To the T. & N. O. R. R. Co.
To the Washington Co. R. R. Co.

GOV. E. J. DAVIS:

To the G., H. & S. A. R. R. Co.
To the Galveston, Houston & Henderson R. R. Co.
To the Indianola R. R. Co.
To the Texas Pacific Railroad Co.
To the Houston & Great Northern R. R. Co.
To the Houston & Texas Central Ry. Co.
To the Waco & Northwestern Ry. Co.

GOV. RICHARD COKE:

To the Texas & Pacific Railroad Co
To the Houston & Great Northern R. R. Co.
To the Gulf, Colorado & Santa Fe Ry. Co.
To the Galveston, Harrisburg & San Antonio R. R. Co.

GOV. R. HUBBARD:

To the Texas Pacific R. R. Co.
To the Houston & Great Northern Ry. Co.
To the Gulf, Colorado & Santa Fe Ry. Co.
To the Denison & Southeastern.
To the East Line & Red River R. R.
To the Tyler Tap R. R.
To the Houston, East & West Texas R. R.
To the Georgetown.
To the Dallas & Wichita.
To the Galveston, Harrisburg & San Antonio R. R.
To the Texas Western.

XV. The lands were surveyed and located and certificates issued as shown by the statement in plaintiff's petition, and it

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will not be necessary for either party to procure copies of the field notes or patents.

XVI. The defendant company completed its line of railway from San Antonio to El Paso, and to Rio Grande river in El Paso County, beginning on the ..... day of....., a distance of 623.14 miles, and ending on the ..... day of ....., 18... , for which it never received any certificates for lands. H. B. Andrews, as vice-president of the Galveston, Harrisburg & San Antonio Railway Company, made application to his excellency, O. M. Roberts, Governor of the State of Texas, to appoint a civil engineer to examine and inspect said portion of completed line, which application was refused by Governor Roberts. The said application and the refusal of the governor thereupon are as follows:

"SAN ANTONIO, May 9, 1882.

"*To His Excellency, O. M. Roberts, Governor of Texas:*

"SIR: I would respectfully request your excellency to appoint some competent civil engineer to examine a portion of the completed line of railroad belonging to the Galveston, Harrisburg & San Antonio Railway Company west of the city of San Antonio, beginning at said city and extending to Del Rio, on the Rio Grande, and beginning at El Paso, in El Paso County, and extending to a point within fifty miles of Eagle's Nest, on the Rio Grande, in Pecos County. The said railroad has been built and completed in accordance with the laws of Texas and the charter of said company. Completed road, about four hundred and sixty miles.

"Respectfully,

[Signed] "H. B. ANDREWS,

"Vice-President G., H. & S. A. Ry. Co."

The envelope in which this application is enclosed is endorsed as follows:

"Application for inspection of the G., H. & S. A. Ry., 460 miles west of San Antonio, etc., by H. B. Andrews, Vice-President, May 9, 1882. Received May 22, 1882. Answered and refused May 22, 1882, because the law granting certificates has been repealed.

[Signed] "O. M. ROBERTS, Governor."

XVII. It may be shown by the special charters or by the general acts of the legislature the different roads which received land grants in Texas.

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XVIII. The act legalizing the organization of the Buffalo Bayou, Brazos Valley & Colorado Railroad Company was approved September 4, 1850.

The Southern Pacific Railroad Company was chartered August 16, 1856.

The San Antonio & Mexican Gulf Railway Company was chartered September 5, 1850.

The Washington County Railroad Company was incorporated February 2, 1856.

The Texas & New Orleans Railroad Company was incorporated prior to February 7, 1861.

The Galveston, Houston & Henderson Railroad Company was incorporated February 7, 1853.

The Indianola Railway Company was incorporated January 21, 1858.

The Texas & Pacific Railway Company was not chartered by the State of Texas.

The Houston & Texas Central Railway Company was incorporated September 1, 1856.

The Waco Tap Railroad Company was incorporated in 1866.

By the Act of May 24, 1873, the Waco & Northwestern Railroad Company was merged with the Houston & Texas Central Railway Company.

The Gulf, Colorado & Santa Fe Railroad Company was incorporated May 28, 1873.

The Denison & Southeastern Railroad Company was chartered July 27, 1877.

The East Line & Red River Railroad Company was incorporated by an Act of March 22, 1871.

The Tyler Tap Railroad Company was incorporated by Act of December 1, 1871.

The Houston, East & West Texas Railway Company was incorporated by Act of March 11, 1875.

The Georgetown Railroad Company was chartered May 31, 1878.

The Dallas & Wichita Railroad Company was incorporated December 2, 1871.

The Texas Western Railroad Company was incorported February 16, 1852.

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The Columbus Tap Railroad Company was incorporated February 2, 1860.

The Gulf, Western Texas & Pacific Railroad Company consolidated with the Indianola & San Antonio Railroad Company August 4, 1870.

The Galveston, Brazos-Colorado N. G. Railroad was incorporated February 2, 1875.

XIX. It is further agreed that it may hereafter be shown in evidence the date when Gen. W. P. Hardeman inspected the said railroad company from San Antonio west, and his report in reference thereto may also be introduced in evidence.

XX. The defendant company located the land sued for by virtue of 315 certificates out of 415 issued on the first section of that portion of its road from the Colorado river to the Guadalupe bridge; the 407 certificates of the 433 issued on the second section of its road; the 308 certificates issued on the third section of its road; 91 certificates of the 192 issued on the fourth section of its road; and the 262 certificates issued on the fifth section of its road, said sections of road being, as heretofore referred to, in this agreement.

XXI. That either party may read and have considered in evidence reports of land commissioners of this State showing number of acres of unappropriated public domain; also messages of the governors showing same at stated periods, and up to the present time.

That the railway company long prior to the institution of this suit, executed mortgages for large amounts of money to secure issue of bonds. The mortgages were secured upon the following property, the line of road and its franchises, and on all the lands, locations, surveys, land scrip, and rights to lands that have been or may be hereafter acquired by said company for the construction of its railroad from Harrisburg to San Antonio, by virtue of any general or special acts of the legislature of the State of Texas making donations of lands.

Some of said mortgages are each for the sum of $20,000 per mile of road. One of said mortgages is the mortgage mentioned in defendant's plea, in which George F. Stone is the sole surviving trustee, and it shall not be necessary to further describe the said mortgages. The said mortgages and bonds which they se-

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cured were issued and floated on the money market, and money obtained for the purpose of building and constructing the railroad of defendant company, and were duly recorded in the counties where lands are situated.

The railway company treated and understood, and also the holders of said mortgages so understood that the lands sued for were embraced in and secured by said mortgages, but this point is not conceded by plaintiff.

The State refused to issue and grant any certificates to the defendant company for any part of the road constructed west from San Antonio to El Paso, which is a distance of 623.14 miles of road.

It was shown by the defendant further that the construction of that part of the railroad began west at Columbus, in March, 1873, and was completed to the west Navidad about January 1st, 1874.

The road was opened for business on the following dates: Weimar, Nov. 16, 1873; Schulenberg, Dec. 1, 1873; Flatonia, April 16, 1874; Waelder, July 1, 1873; Luling, Sept. 1, 1874; Kingsbury, July 23, 1875; Seguin, August 10, 1875; Guadalupe river, August 10, 1876.

Construction west of San Antonio began in May, 1881. The first grading at Rio Grande river near El Paso, was done on March 28, 1881. The construction of the road was finished from El Paso eastward December 27, 1882. The road was opened for business west from San Antonio and El Paso at La Coste, 25 miles, October 1, 1881; at Hondo, 50 miles, 1881; at Sbinal, 71 miles, October 24, 1891; at Uvalde, 93 miles, November 21, 1881; at Eagle Pass Junction, 132 miles, March 6, 1882; at Del Rio, 170 miles, June 23, 1882. Construction west from San Antonio and east from El Paso met in January, 1883.

Defendant introduced the following certificates from the office of the secretary of state, to-wit:

"SAN ANTONIO, June 13, 1881.

"*To His Excellency, O. M. Roberts, Governor of Texas:*

"SIR: I have the honor to inform your excellency that the Galveston, Harrisburg & San Antonio Railway Company have completed an extension of their main line of railway from the

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terminus in the city of San Antonio westward, a distance of over ten miles. The same has been built and completed in full compliance with the laws of Texas governing the construction of railroads and the provisions of the charter of said company, and is a portion of their line being built to connect with a railroad being constructed from the Pacific coast. I would therefore respectfully request the appointment of some competant engineer to inspect and report upon said completed portion of this extension in order that this company may obtain the number of certificates for land to which it is entitled under the laws of Texas.

"Very Respectfully,

[Signed] "H. B. ANDREWS, Vice-President."

"SAN ANTONIO, May 9, 1882.

"*To His Excellency, O. M. Roberts, Governor of Texas:*

"SIR: I would respectfully request your excellency to appoint some competent civil engineer to examine a portion of the completed line of railroad belonging to the Galveston, Harrisburg & San Antonio Railway west of the city of San Antonio, beginning at said city and extending to Del Rio, on the Rio Grande, and beginning at El Paso, in El Paso County, and extending to a point within fifty miles of Eagle's Nest on the Rio Grande in Pecos County. The said railroad has been built and completed in accordance with the laws of Texas and the charter of said company; completed road about 460 miles.

"Respectfully,

[Signed] "H. B. ANDREWS,

"Vice-Pres. G., H. & S. A. R'y. Co."

"Endorsed: Application for inspection of the G., H. & S. A. R'y., 460 miles west of San Antonio, etc., by H. B. Andrews, Vice-Pres., May 9, 1882. Answered and refused May 22, 1882, because the law granting certificates has been repealed.

[Signed] "O. M. ROBERTS, Governor."

"*His Excellency, O. M. Roberts, Governor of Texas:*

"SIR: In obedience to your commission dated Austin, June 25, 1881, authorizing me to inspect ten miles or more of the Galveston, Harrisburg & San Antonio Railway Company, I

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have the honor to report that on the 27th and 28th days of June I inspected and measured said road and find:

"1st. The road is substantially built.

"2nd. That it is fully equipped for the transportation of both passengers and freight, having 32 engines, 4 sleepers, 2 parlor, 6 mail, 186 box, 129 stock, 302 flat cars.

"3rd. That it is operated by steam and constructed of steel rails weighing fifty (50) pounds to the lineal yard.

"4th. The length of road inspected commencing at the passenger depot in the city of San Antonio, ending at the north end of the bridge over the Leona, is eleven (11) miles; drove railroad spike in the end of first sill on the north side of the river, terminal point.

"5th. There are fourteen bridges well built; shortest curve, 4°; maximum grade forty-two feet to the mile.

"6th. The road was completed to San Antonio in February, 1877; the excursion train (which I think was the first passenger train) was on the 19th day of February, 1877.

"7th. Am informed by Major Canno, chief engineer of the road, that the survey west of San Antonio commenced June 1st, 1880, and commenced work January 4th, 1881, west from San Antonio.

"8th. So far as the manner in which the road is built is concerned, it has been constructed in accordance with its charter and the general laws of the State. As to whether it has been built in time, the information contained in this report will enable the attorney-general to determine.

"The road is completed to Medina river, about eighteen miles. They only wanted eleven miles inspected.

"San Antonio, June 29th, 1881.

[Signed] "Wm. P. Hardeman, Special Engineer."

"Sworn to and subscribed before me on this the 30th day of June, A. D. 1881.

[Signed] "John Rosenheimer,
"Notary Public Bexar County, Texas."

"Endorsed: G., H. & San Antonio R. Company Inspection report of W. P. Hardeman of ten miles west of San Antonio, June 30, 1881."

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Defendant introduced in evidence deposition of W. P. Hardeman, and showed by him that he inspected the road west from San Antonio under appointment of Governor Roberts first, and afterwards under contract with Mr. Pierce, who was then the president of the railway company.

The first inspection was made on June 27 and 28, 1881, for eleven miles; balance made not long after the repeal of the law.

The work west of San Antonio began June 4, 1881. From Leona river to a short distance west of Del Rio the road was completed before April 22, 1882, a distance of 183.6 miles. Inspected the road under contract with Pierce from Rio Grande, above El Paso 268 miles, to a point near Marathon, pointed out by chief engineer, Mr. Linburg, as the point to which the road was completed April 22, 1882.

Inspected all that was completed to April 22, 1882; don't know the exact date, but what he did inspect he found complete and in running order, and in other respects according to law.

Defendant proved the following facts by deposition of W. L. McGaughey, commissioner of the general land office:

"The unappropriated public domain was as follows at the dates given:

August 31, 1872..... 88,842,704½
August 31, 1873.....84,565,367.91
January 24, 1874.....83,783,750.91
August 3, 1874.....79,227,793.1

"At the following round dates the unappropriated public domain, according to the then commissioner of the general land office, had ceased to exist, and the State's land liabilities exceeded its assets, to-wit:

August 31, 1882, deficiency....6,136,615 acres
August 31, 1884, deficiency....6,745,723 acres

"At the date of his report, August 31, 1892, excess of public domain over liabilities was estimated at 745,666 acres. Change from liability in 1883 to excess in 1892 was caused by the non-return of certificates within the constitutional limitation of five

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years from date of issuance, or to their location on reserved lands, rendered them void unless floated as provided by law.

"An approximate estimate of the unappropriated public domain reserved from location by certificate and sale made January 12, 1893, makes the number of acres of such land 4,393,835.

"Reservation was first made by the act of July 14, 1879, which took effect October 9, 1879. The number of acres of the unappropriated public domain was at that time approximately 31,025,298, as per report of the commissioner of this office.

"It is agreed that in making out a transcript in this case for appeal, the clerk may leave out the exhibits to the petition of plaintiff and refer to the description of the lands in the judgment, which are accurately described, and having been taken from the petition, are identical therewith, this agreement being made to save the expense, as well as to lessen the size of the record.

"It is agreed by and between the parties hereto that the foregoing contain a true statement of facts, embracing all the material testimony introduced and offered in evidence on the trial hereof."

The plaintiff in error appealed to the Court of Civil Appeals for the Fourth Supreme Judicial District of the State of Texas, and that court certified to the Supreme Court of the State the main questions upon which the case depended.

The certified questions and the opinion of the Supreme Court will be here inserted together to avoid repetition. They read as follows: "The following questions have been certified for our determination: 'The State of Texas instituted suit against the appellant to cancel certain land certificates and patents issued by the State to appellant for land amounting to 879,078 $\frac{1}{2}$ acres. It was alleged and proved that the certificates and patents were issued to the Galveston, Harrisburg & San Antonio Railway Company for a portion of its railroad constructed between the Colorado river and Guadalupe river, between the time of the adoption of the Constitution of 1869 and the passage of the Act of August 16th, 1876 (Arts. 4267 to 4277, Rev. Stats). On July 27th, 1870, by special act of the legislature, appellant was chartered and recognized as the successor of the Buffalo Bayou, Brazos & Colorado Railroad Company. After the passage of

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the Act of August 16, 1876, and before its repeal in 1882, appellant constructed about 163 miles of railroad from San Antonio westward towards El Paso, for which the State refused to issue land certificates, the governor refusing the application for inspection on May 22, 1882, on the ground that the law granting certificates had been repealed.'

"Question 1. Did section 6, article 10, of the Constitution of 1869, repeal all laws giving railroad companies the right to earn lands from the State by the construction of railroads; and if so, would this repeal apply as well to the right to earn lands given through charters as through general laws?

"Question 2. If the above be answered in the negative, did appellant succeed to the rights of the Buffalo Bayou, Brazos & Colorado Railway Company by virtue of the special act of 1870, said Buffalo Bayou, Brazos & Colorado Railway Company being restricted by special act of February 11th, 1854, to run its line to Austin?

"Question 3. If the laws as to land grants to railroads passed prior to 1869 were repealed by the Constitution of that year, can appellant interpose and maintain in this suit the equitable defense that if the certificates issued for that portion of the road between the Colorado and Guadalupe rivers from 1870 to 1876 were illegally obtained, that the State is in no position to ask the relief sought, by reason of the fact that appellant has earned the certificates for said 163 miles of road?

"Question 4. If the last question be affirmatively answered, would the fact that at the time the land for 163 miles west of San Antonio was earned by appellant the public lands were exhausted, affect the equities of the case?"

1. Our opinion upon the second question certified renders, we think, a decision of the first unnecessary. We therefore pass to a discussion of the second.

2. The Buffalo Bayou, Brazos & Colorado River Railroad Company was incorporated by a special act of the legislature, to which there were several amendments. Its name was changed to that of the Galveston, Harrisburg & San Antonio Railway Company, also by special act. The statement accompanying the question does not expressly advise us whether these acts were pleaded and proved upon the trial or not. However, the

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briefs of the parties which were filed in the Court of Civil Appeals, and which are sent up with the certificate, indicate that they were. Since it is impossible for us to properly decide the questions submitted without having before us the legislation upon which the company bases its claim to the lands in controversy, we conclude that the special acts of the legislature affecting that claim were properly brought to the knowledge of the trial court, and that the questions have been certified upon that assumption. We shall, therefore, discuss the points presented, assuming that we are to look to all the legislation upon which the company's claim depends.

The act incorporating the Buffalo Bayou, Brazos & Colorado Railroad Company was approved February 11, 1850. By that act the company was authorized to construct and maintain a railroad "commencing at any suitable point on Buffalo Bayou between Lynchburg and Houston in the county of Harris, and thence running by such course and to such point at or near the Brazos River between the towns of Richmond and Washington, inclusive, as said company shall deem most suitable, with the privilege of making, owning and maintaining such branches of said railway as they may deem expedient" (Laws 1849-50, p. 194). No privilege of acquiring lands was granted by this act, but another special law was passed by the fourth legislature, and was approved January 27, 1853, which authorized the commissioner of the general land office to issue to the company certificates to the amount of eight sections of land for each mile of road that should be completed and put in good running order, under certain restrictions not necessary to mention (Special Laws 1853, p. 3). On the 30th day of January, 1854, a general statute was approved by the governor which granted to all railway companies which had theretofore constructed, or which should thereafter construct twenty-five miles of railroad, certificates to the amount of sixteen sections of land for each mile of road (Laws 1853-4, p. 11). This act also contained conditions and restrictions which we need not detail in this connection.

The same legislature passed two special acts, one amendatory of the charter of the Buffalo Bayou, Brazos & Colorado Railroad Company and the other supplemental thereto, the first of which provided "that the 'Buffalo Bayou, Brazos & Colorado

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Railroad Company' shall be entitled to all the rights, privileges and benefits accruing from any general law or laws that have or may hereafter be passed by this State to encourage the constructing of railroads in the same manner and to the same extent as if the gauge of said road was the same now fixed or which may be hereafter fixed upon by this State."

By the second it was provided "that if the Buffalo Bayou, Brazos & Colorado Railroad Company shall avail themselves of the act to which this is a supplement, or accept any donation of land from the State, they shall not be entitled to receive any such donation from the State under the provisions of this law, or any law that has heretofore been passed for their benefit, for any portion of their road which shall not be completed and ready for use within ten years from and after the passage of this act; provided, that said company shall restrict themselves to the following route, viz.: To an extension of their existing road to Austin, in the county of Travis, crossing the Brazos River at any point between the towns of Richmond, in Fort Bend County, and Hidalgo Falls, in Washington County, and with the right of extending their road from Austin to connect with any road running north of Austin towards the Pacific Ocean; provided, such connections be made between the ninety-sixth and ninety-eighth parellels of longitude; and provided further, that said company shall have no right to build branches from their main road."

Both these acts were approved February 4, 1854. Whether or not the company ever accepted the benefits of these acts, the meagre statement of the Court of Civil Appeals does not advise us; but since the act of July 27, 1870, which changed the name of the company to its present name, under certain conditions, authorizes an issue of certificates to the amount of sixteen sections per mile for such portions of the road as had been constructed before the war, but not within the time provided by the act of January 30, 1854, we infer that it did so accept.

During the period of the civil war two laws were passed which had the effect to relieve the existing railroad companies from the limitations as to time embraced in the act of 1854 until two years after the close of the war; and on the 13th day of November, 1866, an act was approved which contained the following section: "Be it enacted by the legislature of the State of

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Texas: That the grant of sixteen sections of land to the mile to railroad companies heretofore or hereafter constructing railroads in Texas shall be extended, under the same restrictions and limitations heretofore provided by law, for ten years after the passage of this act."

The special act of July 27, 1870, recognized the present company as the purchaser of the franchises, rights and property of the original company, which had been "sold out," and as its successor, and changed the name to that of the Galveston, Harrisburg & San Antonio Railway Company, and amended its charter in important particulars. We quote so much of that law as is deemed necessary for the purposes of this opinion:

"WHEREAS, On the seventh July, 1868, 'the roadbed, track, franchises, and chartered rights and privileges' of the Buffalo Bayou, Brazos & Colorado Railroad Company were sold on executions issued on judgments against said company, and on the 24th January, 1870, the railroad of said company from Harrisburg to Alleytown and its franchises, rights and other property appertaining thereto were sold under the provisions of a mortgage or deed of trust made by said company on the first November, 1860, all of which appears of record; and

"WHEREAS, the act of December 19, 1857, 'supplementary to and amendatory of an act to regulate railroad companies,' provides that the purchasers at such sales and their associates 'shall be entitled to have and exercise all the powers, privileges and franchises granted to the company sold out,' by its charter or by virtue of the general laws of this State, and 'shall be deemed and taken to be the true owners of said charter and corporators under the same, and vested with all the powers, rights, privileges and benefits thereof;' and

"WHEREAS, the purchasers at said sales and their associates have formed a new company under said old name, and have expended large sums of money in the reconstruction of said railroad, in the purchase and completion of the Columbus Tap railroad and the bridge of the Brazos Iron Bridge Company over the Brazos river at Richmond; and whereas, said new company desires to be distinguished by name from said 'sold out' company, to consolidate its property and to extend its line of railroad; therefore,

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"SECTION 1. Be it enacted by the legislature of the State of Texas: That the new company heretofore known as the Buffalo Bayou, Brazos and Colorado Railroad Company, referred to in the preamble of this act, shall be hereafter known by the corporate name of 'the Galveston, Harrisburg & San Antonio Railway Company,' and may alter its seal to conform to its name; provided, that said new company shall be liable to the State of Texas for the debt of said 'sold out' company for loans made to the latter company from the special school fund, in the same manner and to the same extent that the said 'sold out' company was liable; and that said change of name shall in no respect impair or affect said liability, or the existing lien or mortgage of the State upon the railroad of said company as security for said loans."

"But the Constitution which was in force at the time this last named act was passed contained this provision: 'The legislature shall not hereafter grant land to any person or persons, nor shall any certificates for land be sold at the land office, except to actual settlers upon the same, and in limits not exceeding one hundred and sixty acres.' (Cons. 1869, art. 10, sec. 6.)

"In so far as the determination of the question under consideration is concerned we think it may be conceded for the purposes of the argument that the company acquired a right to sixteen sections of land per mile of constructed railroad under the general law of 1854 and the special acts above recited amendatory of its charter, and that this right was preserved by the general law of 1866. It may also be conceded for the same purpose that section 6 of article 10 of the Constitution of 1869 was intended to have purely a prospective effect and did not operate to repeal either the law of 1854 or that of 1866 as to railroad companies then in existence, for if it should be held that the privileges extended by the previous laws to existing companies was not affected by the section the question arises whether after that Constitution took effect an act of the legislature which authorized the company to change its former route and to construct a different line of road would carry with it the right to acquire land by the construction of the new line. It must be borne in mind that when the Constitution of 1869 was adopted no general law was in force for the incorporation of railroad companies. The

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charters of all the other existing companies had been granted by special acts of the legislature; all of which defined with some degree of certainty the line of road to be constructed. We construe the general law of January 30, 1854, as applying only to companies then chartered. (See Quinlan vs. H. & T. C. R'y Co., this day decided.) It was clear that it was intended to grant land to the companies for the construction of railroads which their charters authorized them to build. It may be conceded that so long as the general law which granted privileges of acquiring lands remained in force, and so long as no constitutional inhibition stood in the way, legislative authority to a company to change the line to be constructed should be construed to carry with it the privilege of earning lands for the construction of the new line. At all events, it is clear, we think, that the act of February 4, 1854, supplemental to the act of the same date, which extended the privileges of the general law of January 30, 1854, to the company, restricted those privileges to the line to Austin and to the extension of that line. The proviso "that said company shall restrict themselves to the following route, viz., to an extension of their existing line to Austin," admits of no other construction. The purpose and effect of the first section of the act of November 13, 1866, was merely to give to the companies to which it applied ten years from the date of the act within which to comply with the terms of their charters and the general laws with respect to land grants. Let us admit then for the purposes of the argument that in 1870, when the name of the company was changed and when it was granted authority to alter the line to be constructed, that it had the right to acquire lands by the construction of its line as fixed by the supplemental act of 1854, we are still confronted with the question, did the legislature have the power, had it so intended, so to authorize a change of its line and at the same time to carry with the change of line the privilege of earning lands for the construction of a different road? Section 6 of article 10 of the Constitution then in force prohibited the legislature from granting lands thereafter for the construction of a railroad. That it could authorize a change of route there can be no question; but there is a grave question whether or not it could, under the Constitution, then existing, transfer a privilege

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of acquiring lands by the construction of a well defined line of railroads from a route so defined to another not contained in the previous grant. The company before the passage of the act of 1870 had no right to acquire lands by the building of a railroad to San Antonio. To complete that right a new grant was requisite, but at that time the legislature was prohibited in the broadest terms from making any grant whatever. It matters not that the transaction may be looked upon as being somewhat in the nature of an exchange, and that the building of the new line may have involved a grant of no more, or even less land, than may have been acquired by the construction of the old line. It involved a grant of land as to the new line, and that the legislature had no right to make. Let us state the proposition in another form: If it were the right of the company under the existing laws to acquire lands by doing a specific thing, the legislature, having no power under the Constitution to make any grant of lands, could not confer upon it the right to earn lands by doing another a different thing.

"So far we have discussed the question as if in passing the act of 1870 the legislature had intended to transfer the right of the company as to the lands to be acquired from the old to the new line; but we find nothing in the act which manifests such an intention. On the contrary, the twelfth section of the act, as above quoted, indicates that it was not the purpose in any manner to extend the existing rights of the company with reference to the acquisition of lands from the State.

"It is to be noted that the third section of the act of 1870 not only authorized the company to change its route so as to run to San Antonio instead of Austin, but in addition thereto reserved to it the right to build upon the route formerly designated to the sold out company. It is evident, therefore, that to concede to the company the right to earn lands by the construction of the new line involves a new and additional grant—a grant which the legislature, under the Constitution of 1869, could have made neither expressly nor by implication.

"This question was before this court at a former term, in a suit between the same parties, and the point was there resolved as we resolve it now (G. H. & S. A. Ry. Co. vs. State, 81 Texas, 572); but it is urgently insisted that the question was not in-

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volved in that case. Without conceding the correctness of this contention, in view of the magnitude of the interests involved in the present case, we have gone over the question anew, and without reposing upon the former decision, have arrived at the same result. We are therefore of the opinion that the Galveston, Harrisburg & San Antonio Railway Company did not, by virtue of the act of July 27th, 1870, acquire the right to earn lands by the construction of its line to San Antonio.

"3. Referring to the third question certified by the Court of Civil Appeals, we are of the opinion that it is no defense to an action of the State for the recovery of the lands involved in this suit, that the company may have been entitled to certificates for the 163 miles of additional road constructed under the law of 1876. It acquired no title, either legal or equitable, to the lands in controversy by causing them to be surveyed and patented under the certificates granted for the San Antonio extension. To make its right to lands earned by the additional construction effectual for any purpose, it must have procured its certificates and located them upon some portion of the public domain not reserved from the location of such certificates. Our complicated and ever varying laws in regard to the appropriation of the public domain have probably given rise to more questions affecting the location of lands than have ever arisen in any other jurisdiction, and yet we know of no case in this court in which it has ever been ruled that the claimant of land against the State, under a location made by virtue of a void certificate, has any equity in the premises by reason of being the possessor of another valid certificate.

"4. The third question not having been answered in the affirmative, the fourth does not arise.

"R. R. GAINES, Chief Justice."

The Court of Civil Appeals thereafter affirmed the judgment of the court below. (Record, pp. 126 to 130.)

The plaintiff in error sought a writ of error from the Supreme Court of the State to the Court of Civil Appeals, which was denied. (Record, p. 151.) Writ of error was subsequently granted by Chief Justice James for the Court of Civil Appeals

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for the Fourth Supreme Judicial District of Texas. (Record, p. 163.)

The plaintiff in error presents in this court twelve assignments of error, which are as follows:

"First.—The said Court of Civil Appeals erred in overruling and holding not well taken appellant's first and second assignments of error, each of which complained, in effect, of the action and ruling of the District Court of Brewster County in refusing appellant's application to remove this cause into the Circuit Court of the United States, and in proceeding with this cause after the presentation of the petition and bond for such removal.

"Second.—The said Court of Civil Appeals erred in overruling and holding not well taken appellant's fifth assignment of error, and in deciding that the special acts of the legislature of the State of Texas, approved February 11th, 1850; September 4th, 1850; January 29th, 1853; February 4th, 1854, and July 27th, 1870, chartering and amending the charter of plaintiff in error railway company, and the general acts of the legislature of the State of Texas, approved January 30th, 1854; January 11th, 1862, and November 13th, 1866, and the acceptance of said laws and the construction by plaintiff in error railway company at large expense of an important part of its line of railway prior to the adoption of the Constitution of Texas in 1869, and the completion of its entire line subsequently and in due time did not constitute a valid contract between the State of Texas and the said railway company, entitling said railway company and creating in it a vested right to lands granted by said laws and earned by said railway company thereunder, including the lands involved in this suit, and in holding and deciding in effect that said contract could be and was impaired, and the right of said railway company to said land was divested by the Constitution of Texas, adopted in 1869, contrary to and in violation of the Constitution of the United States, and especially article 1, section 10 thereof, and section 1, article XIV of the amendments thereof.

"Third.—The said Court of Civil Appeals erred in not deciding that the special acts of the legislature of the State of Texas, approved February 11th, 1850; September 4th, 1850; January

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29th, 1853; February 4th, 1854, and July 27th, 1870, chartering and amending the charter of plaintiff in error railway company, and the general acts of the legislature of the State of Texas, approved January, 30th, 1854; January 11th, 1862, and November 13th, 1866, and the acceptance of said laws, and the construction by plaintiff in error railway company at large expense of an important part of its line of railway prior to the adoption of the Constitution of Texas in 1869, and the completion of its entire line subsequently and in due time constituted a valid contract between the State of Texas and said railway company entitling said railway company and creating in it a vested right to the lands granted by said laws and earned by said railway company thereunder, including the lands involved in this suit, and in not holding and deciding in effect that said contract could not be and was not impaired, and the right of said railway company to said land was not divested by the Constitution of Texas, adopted in 1869, and that in so far as said State Constitution attempted to impair such contract and divest such right, the same was and is contrary to and in violation of the Constitution of the United States, and especially article 1, section X thereof, and section 1, article XIV of the amendments thereof, and therefore void.

"Fourth.—The said Court of Civil Appeals erred in overruling and holding not well taken appellant's ninth assignment of error and in deciding that plaintiff in error railway company had not, under the general act of the legislature of the State of Texas approved August 16th, 1876, by constructing and completing its road between San Antonio and El Paso, a distance of 623 miles, in consideration of the grant of sixteen sections of land made by said act for each mile of road so constructed, acquired a contract and vested right to and was entitled to hold under the grant thus made the lands involved in this suit, which contract and vested right could not be impaired or divested by the general act of the legislature of the State of Texas approved April 22, 1882, and in not deciding that the last mentioned act, which attempted to repeal the laws granting such lands to said railway company, was and is contrary to and in violation of the Constitution of the United States, and especially article 1 of Section X, thereof, and section 1 of article XIV, of the amend-

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ments thereof, and could not, therefore, impair said company's contract right or divest it of said lands.

"Fifth.—Said Court of Civil Appeals erred in overruling and holding not well taken appellant's tenth assignment of error and in deciding that plaintiff in error railway company had not, under the general act of the legislature of the State of Texas approved August 16th, 1876, by constructing and completing its road between San Antonio and El Paso, a distance of 623 miles, in consideration of the grant of sixteen sections of land made by such act for each mile of road so constructed, acquired a contract and vested right to and was entitled to hold under the grant thus made the lands involved in this suit, which contract and vested right could not be impared or divested by the general act of the legislature of the State of Texas approved April 22, 1882, and in not deciding that the last mentioned act, which attempted to repeal the laws granting such lands to said railway company, was and is contrary to and in violation of the Constitution of the United States, and especially article 1 of section 10 thereof, and section 1 of article XIV of the amendments thereof, and could not therefore impair said company's contract right or divest it of said lands.

"Sixth.—Said Court of Civil Appeals erred in overruling and holding not well taken appellant's eleventh assignment of error and in deciding that plaintiff in error railway company had not, under the general act of the legislature of the State of Texas approved August 16th, 1876, by constructing its road between San Antonio and El Paso, a distance of 623 miles, in consideration of the grant of sixteen sections of land made by said act for each mile of road so constructed, acquired a contract and vested right in and to and was entitled to hold under the grant thus made the lands involved in this suit, which contract and vested right could not be impaired or divested by the general act of the legislature of the State of Texas approved April 22, 1882, and in not deciding that the last mentioned act, which attempted to repeal the laws granting such land to said railway company, was and is contrary to and in violation of the Constitution of the United States, and especially article 1 of section X thereof, and section 1 of article XIV of the amendments thereof, and could not,

therefore, impair said company's contract right or divest it of said lands.

"Seventh.—Said Court of Civil Appeals erred in overruling and holding not well taken appellant's thirteenth assignment of error and in deciding that plaintiff in error railway company had not, under the general act of the legislature approved August 16th, 1876, by constructing and completing its road between San Antonio and El Paso, a distance of 623 miles, in consideration of the grant of sixteen sections of land made by said act for each mile of road so constructed, acquired a contract and vested right to and was entitled to hold under the grant thus made the lands involved in this suit, which contract and vested right could not be impaired or divested by the general act of the legislature of the State of Texas approved April 22, 1882, and in not deciding that the last mentioned act, which attempted to repeal the laws granting such lands to said railway company, was and is contrary to and in violation of the Constitution of the United States, and especially article 1 of section X thereof, and section 1 of article XIV of the amendments thereof, and could not, therefore, impair said company's contract right or divest it of said lands.

"Eighth.—Said Court of Civil Appeals erred in overruling and holding not well taken appellant's fourteenth assignment of error and in deciding that plaintiff in error railway company had not, under the general act of the legislature of the State of Texas approved August 16th, 1876, by constructing and completing its road between San Antonio and El Paso, a distance of 623 miles, in consideration of the grant of sixteen sections of land made by said act for each mile of road so constructed, acquired a contract and vested right to and was entitled to hold under the grant thus made the lands involved in this suit, which contract and vested right could not be impaired or divested by the general act of the legislature of the State of Texas approved April 22, 1882, and in not deciding that the last mentioned act, which attempted to repeal the laws granting such lands to said railway company, was and is contrary to and in violation of the Constitution of the United States, and especially article 1 of section X thereof, and section 1 of article XIV of the amendments

thereof, and could not, therefore, impair said company's contract right or divest it of said lands.

"Ninth.—Said Court of Civil Appeals erred in overruling and holding not well taken appellant's fifteenth assignment of error, and deciding that plaintiff in error railway company had not, under the general act of the legislature of the State of Texas approved August 16th, 1876, by constructing and completing its road between San Antonio and El Paso, a distance of 623 miles, in consideration of the grant of sixteen sections of land made by said act for each mile of road so constructed acquired a contract and vested right to and was entitled to hold under the grant thus made the lands involved in this suit, which contract and vested right could not be impaired or divested by the general act of the legislature of the State of Texas approved April 22, 1882, and in not deciding that the last mentioned act, which attempted to repeal the laws granting such lands to said railway company, was and is contrary to and in violation of the Constitution of the United States, and especially article 1, section X, and section 1 of article XIV of the amendments thereof, and could not, therefore, impair such company's contract right or divest it of said lands.

"Tenth.—Said Court of Civil Appeals erred in overruling and holding not well taken appellant's seventeenth assignment of error and in deciding that plaintiff in error railway company had not, under the general act of the legislature of the State of Texas approved August 16th, 1876, by constructing and completing its road between San Antonio and El Paso, a distance of 623 miles, in consideration of the grant of sixteen sections of land made by said act for each mile of road so constructed, acquired a contract and vested right to and was entitled to hold under the grant thus made the lands involved in this suit, which contract and vested right could not be impaired or divested by the general act of the legislature of the State of Texas approved April 22, 1882, and in not deciding that the last mentioned act, which attempted to repeal the laws granting such lands to said railway company, was and is contrary to and in violation of the Constitution of the United States, and especially article 1 of section X thereof, and section 1 of article XIV of the amend-

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ments thereof, and could not, therefore, impair said company's contract right or divest it of said lands.

"Eleventh.—Said Court of Civil Appeals erred in holding and deciding that plaintiff in error railway company had not, under the general act of the legislature of the State of Texas, approved August 16, 1876, by constructing its road between San Antonio and El Paso, a distance of 623 miles, in consideration of the grant of sixteen sections of land made by said act for each mile of road so constructed, acquired a contract and vested right to and was entitled to hold under the grant thus made the lands involved in this suit, which contract and vested right could not be impaired or divested by the general act of the legislature of the State of Texas, approved April 22, 1882, and in not deciding that the last-mentioned act, which attempted to repeal the laws granting such lands to said railway company, was and is contrary to and in violation of the Constitution of the United States, and especially article 1 of section 10 thereof, and section 1 of article XIV of the amendments thereof, and could not, therefore, impair said company's contract right or divest it of said lands.

"Twelfth.—Said Court of Civil Appeals erred in affirming the judgment of the District Court in and for Brewster County, whereby the State of Texas had and recovered the said lands from plaintiffs in error, and in not reversing the said judgment.

Wherefore, the Galveston, Harrisburg & San Antonio Railway Company, E. P. Hill and W. N. Shaw, plaintiffs in error, pray that the judgment of the said Court of Civil Appeals be reversed and said cause be remanded, and for such further proceedings as law and justice may require."

FIRST COUNTER-PROPOSITION UNDER FIRST ASSIGNMENT OF ERROR.

The Court of Civil Appeals did not err in overruling the first and second assignments of error, which related to the refusal of the trial court to remove the cause from the State court to the Federal Court. Because the statement of plaintiff's cause of action discloses no Federal question.

Statement.—The statement of plaintiff's cause of action, as far

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as the point involved is concerned, is fairly included in the following paragraph:

"Plaintiff further represents and shows to the court that the certificates referred to in said exhibits were issued to the defendant company for the construction of its road from the town of Columbus to the Guadalupe bridge, as heretofore shown, and that every portion of said road was constructed and completed between July 27, 1870, and October 27, 1876.

"That at no time during said period was there any law in existence in this State authorizing the issuance of land certificates to the defendant company for main track or sidings, and especially does the plaintiff aver and represent that—no time during said period was there any law in existence authorizing the issuance of certificates to said company for the construction of its line of road between Columbus and the Guadalupe bridge. (Subdiv. 10, Record, p. 35.)

Based upon the allegations above mentioned, the conclusion was stated on the same page as the record that the commissioner of the land office acted in excess of his authority in issuing and delivering to the defendant company the land certificates and in permitting them to be located on the land in question, and in accepting the field notes, which were returned and filed in the land office.

Authorities:

Tennessee Bank vs. Bank, 152 U. S., 455-64.
Chappell vs. Waterworks, 155 U. S., 102.
P. T. C. Co. vs. Alabama, 155 U. S., 487.
East Lake Co. vs. Brown, 155 U. S., 488.

FIRST COUNTER-PROPOSITION UNDER SECOND ASSIGNMENT OF ERROR.

The court did not err in holding that the several acts of the legislature passed prior to the adoption of the Constitution of 1869 constituted a contract between the Galveston, Harrisburg & San Antonio Railway Company and the State of Texas, because the Galveston, Harrisburg & San Antonio Railway Company did not exist prior to the adoption of the State Constitution of 1870.

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Statement: The act chartering the appellant company was passed on the 27th of July, 1870. So much of it as relates to the question before the court reads as follows:

"Whereas, on the seventh July, 1868, the 'roadbed, track, franchise, and chartered rights and privileges' of the Buffalo Bayou, Brazos and Colorado Railway Company were sold on executions issued on judgments against said company; and on the twenty-fourth January, 1870, the railroad of said company from Harrisburg to Alleytown, and its franchise, rights, and other property appertaining thereto, were sold under the provisions of a mortgage or deed of trust made by said company on the first November, 1860, all of which appears of record; and

"Whereas, the act of December 19, 1857, 'supplemantary to and amendatory of an act to regulate railroad companies,' provides that the purchasers at such sales, and their associates 'shall be entitled to have and exercise all the powers, privileges, and franchises granted to' the company sold out 'by its charter, or by virtue of the general laws of this State,' and 'shall be deemed and taken to be the true owners of said charter, and corporators under the same, and vested with all the powers, rights, privileges and benefits thereof,' and

"Whereas, the purchasers at said sales, and their associates, have formed a new company under said old name, and have expended large sums of money in the reconstruction of said railroad, in the purchase and completion of the Columbus Tap Railroad, and the bridge of the Brazos Iron Company over the Brazos river at Richmond; and

"Whereas, said new company desires to be distinguished by name from said 'sold out' company, to consolidate its property, and to extend said line of railroad; therefore,

"Section 1. Be it enacted by the Legislature of the State of Texas: That the new company heretofore known as the Buffalo Bayou, Brazos and Colorado Railway Company, referred to in the preamble of this act, shall be hereafter known by the corporate name of 'The Galveston, Harrisburg and San Antonio Railway Company,' and may alter its seal to conform to its name; provided, that said new company shall be liable to the State of Texas for the debt of said 'sold out' company, for loans made to the latter company from the special school fund, in the same manner and to same extent as said 'sold out' company was liable; and that said change of name shall in no respect impair or affect said liability, or the existing lien or mortgage of the State upon the railroad of said company as security for said loans. Also, provided, that said change of name shall in no respect impair or affect any of the obligations of said new company to other parties, or the obligations of other parties to said new company; all of which may be enforced by or against said new company under said new name.

"Sec. 2. That said railroad company may avoid the sale of its railroad for its indebtedness to the State for loans from the special school fund, and for the non-payment of principal and interest, by the payment into the treasury of the State, on the first day of November, A. D. 1870, of six months'

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interest on the aggregate amount due on account of said loans, principal and interest, as said aggregate amount stood on the first day of May, A. D. 1870, and by the payment in addition, on said first day of November, of one per cent. upon said aggregate amount, to be applied towards the sinking fund provided for by existing laws in respect to said loans, and by continuing to pay into the treasury of the State six months' interest and one per cent on account of said sinking fund semi-annually thereafter, to-wit: on the first day of May and November, in each year; provided, that in case of failure to comply with any payment required under this section, the governor shall sell the said road under the regulations provided in the law of August 13, 1856.

"Sec. 3. That said new company is hereby authorized to extend the existing line of railroad owned and operated by said company from Columbus, in Colorado County, to San Antonio, in the county of Bexar, within four years from the passage of this act, and thence to a terminus on the Rio Grande, by such route as the directors shall deem most feasible, with a branch from the most suitable point to New Braunfels, in Comal County, within four years from the passage of this act; or said new company may connect with any line of railroad that may be constructed or under construction to San Antonio or the Rio Grande, south of the latitude of the city of Austin and the Colorado river, instead of building its own line beyond the point of such connection; and may build to or connect with any line of railroad that may be constructed, or under construction, and designed to form part of any railroad line to the Pacific, south of the thirty-fifth parallel of latitude; nothing herein being so construed as to exclude said new company from the right to construct also, any part of the line up the Colorado valley, formerly designated by said 'sold out' company as its route under the provisions of the eleventh section of the act of December 19, 1857; provided, that if the said road shall not be completed within the time specified in this section, then this charter shall be forfeited.

"Sec. 4. That said new company may consolidate with its existing railroad the bridge built by the Brazos Iron Bridge Company over the Brazos river at Richmond, and the five miles of railroad, more or less, including side tracks, from the town of Alleytown to the town of Columbus, built under the charter granted in the year 1860 to the Columbus Tap Railroad Company, including the bridge over the Colorado river at Columbus, together with all the franchises, rights, fixtures, and appurtenances of, or upon any of the same, and may construct and maintain telegraphs along its lines.

"Sec. 5. That said new company may issue its bonds, under seal or otherwise, and secure the same by mortgage or mortgages upon its said consolidated line of railroad, or any part of the same, and any such mortgage may be so expressed as to include and cover, as said company shall construct the same, the lines of railroad it may construct in extension of its existing line, together with all the franchises and rights, bridges, depots, fixtures, equipments, machinery, and the appurtenances and property of said railroad, and of said company, of every kind, or any part thereof, whether constructed or acquired before or after the execution of said mortgage, and

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with provision for a sinking fund sufficient for its extinguishment at the maturity of the principal of the bonds secured thereby. That the amount of bonds that may, at any time, be outstanding under any such mortgage, shall not exceed twenty thousand dollars for each mile of single main track, with the necessary turnouts, included in such mortgage, and completed and in running order. That all the bonds secured by such mortgage shall be on an equality in respect to the benefits of the same, shall be of the same form and tenor, except that they may be of different dates, and for different amounts, and shall mature at the same time, in not more than fifty years from the date of those of said bonds which shall be first issued. That said bonds shall bear interest at such rates, not exceeding eight per cent. per annum, payable semi-annually; both principal and interest shall be payable in gold, or other lawful currency of the United States, at the places named in the bonds and coupons, and, with said mortgage or mortgages, may be otherwise in such form, and contain such stipulations not inconsistent with the provisions of this act, as the directors shall think proper to embody therein.

"Sec. 6. That said new company may issue such other bonds, and secure them by other mortgage or mortgages, on its railroad, franchises and property, or any part of the same, subsequent and subject to the mortgages hereinbefore provided for, as the interest of said company may require. And any bonds lawfully issued by said new company may be disposed of by the directors on such terms as they shall think proper.

"Sec. 7.

"Sec. 8. That in case it shall be made to appear to the governor that there has not been issued upon said railroad the full quantity of sixteen sections of land scrip for every mile of the same that was constructed and put in running order prior to the war of the late rebellion, in accordance with the provisions of the charter and of the general laws of the State, in force at the time regulating railroads, there shall be issued to said new company said scrip to the amount of any such deficiency, notwithstanding said railroad may not have been constructed and completed at the rate of twenty-five miles each year after the construction of the first twenty-five miles, as provided in the act of January 30th, 1854.

"Sec. 9. That meetings of said new company and of the directors may, when desirable, be held at an office of said company in Boston, Massachusetts, as well as at the 'principal office' of the company in Texas; provided, that the votes passed at meetings in Boston shall be within thirty days therefrom, spread upon the records, which shall be kept at the 'principal office' in Texas. That a majority of the directors and the president and treasurer shall not be required to reside in this State so long as the vice-president and assistant treasurer reside therein; and directors may vote by proxy under such regulations as the by-laws may prescribe.

"Sec. 10. That said new company may make a terminus of said railroad at the city of Houston, and for that purpose may acquire, by agreement with the owners, any part of the Houston, Tap & Brazoria Railroad; and said company may make a terminus at the city of Galveston, arranging with any

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railroad running to Galveston for a third rail thereon, or other connection therewith, or extend its own line thereto, if preferable.

"Sec. 11. The said new company shall be entitled to the same or similar rights and relief, except State aid in bonds, or indorsement of, or guaranty of interest on bonds, granted to or provided for any other railroad company by the legislature, and upon the same or similar terms and conditions, so far as such rights or relief are, in their character, applicable to said new company or its line, or lines, of railroad.

"Sec. 12. That nothing in this act shall be so construed as to deprive any party interested, of the right to disprove any assumed fact stated in the preamble, provided, that nothing in this act contained shall be construed as reviving or renewing any land grant to said company for road hereafter to be completed, which it does not possess by existing law.

"Sec. 13. That this act shall take effect from its passage."

Authorities:

Argument: It is clear that the Galveston, Harrisburg & San Antonio Railway Company did not exist until the 27th day of July, 1870. It was therefore impossible for it to have made any contract with the State before it had any legal existence. Its power to contract dated from its creation. These powers are measured by the act in question, which was its charter.

But it is insisted, however, that it is but a continuation of the Buffalo Bayou, Brazos & Colorado Railroad Company under a new name. The preamble to the charter of the plaintiff in error destroys that contention. It recites that, "Whereas, On the seventh July, 1868, 'the road-bed, track, franchise, and chartered rights and privileges,' of the Buffalo Bayou, Brazos and Colorado Railway Company were sold on executions issued on judgments against said company; and that on the twenty-fourth January, 1870, the railroad of said company from Harrisburg to Alleytown, and its franchise, rights, and other property appertaining thereto, were sold under the provisions of a mortgage or deed of trust made by said company on the first November, 1860, all of which appears of record," etc. It further recites that the law authorized the purchasers at such sales, and their associates, to exercise all of the powers, privileges and franchises granted to the "sold out" company, and

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that they shall be taken to be the true owners of such charter and corporators under the same, and vested with all the powers, privileges and benefits thereof. It then follows that, "Whereas, The purchasers at said sales, and their associates, *have formed a new company* under such old name, and have expended large sums of money in the construction of said railroad, in the purchase and completion of the Columbus Tap Railroad, and the bridge of the Brazos Iron Bridge Company over the Brazos River at Richmond;" and then recites that "Whereas, Said new company desires to be distinguished by name from said 'sold out' company, to consolidate its property, and to extend said line of railroad; Therefore, Be it enacted * * * that the *new* company heretofore known as the Buffalo Bayou, Brazos & Colorado Railway Company, referred to in the preamble of this act, shall be hereafter known by the name of the Galveston, Harrisburg & San Antonio Railway Company."

It will be noted that it was not the old company known as the Buffalo Bayou, Brazos & Colorado Railway Company that had its name changed by this act. It was a new company of that name, which the purchasers of the property of the "sold out" company had formed. Unless that is true, the third section of the preamble has no meaning. It says: "Whereas, The purchasers at said sales and their associates have formed A NEW COMPANY UNDER SAID OLD NAME:" then follows: "Said new company desires to be distinguished by name from said sold out company." Therefore the act was passed. It seems idle for the plaintiff in error now to contend that the new company thus formed, incorporated as the Galveston, Harrisburg & San Antonio Railway Company, can be confused with the old Buffalo Bayou, Brazos & Colorado Railway Company, since the very purpose of the charter in question was to distinguish this company from the old company. The contention is without merit.

Moreover, sections 3, 4, 5, 6, 9, 10 and 11 of the charter distinctly refer to the Galveston, Harrisburg & San Antonio Railway Company as the "new company." And almost as frequently refer to the old company as the "sold out" company. It seems, therefore, incredible that any one should contend that the old company sold out, and the new company, viz., the Galveston, Harrisburg & San Antonio Railway Company, should

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be considered one and the same. As above indicated, the sole purpose of the act was to avoid the confusion incident to the new company having the same name as the old company. Besides that, the Texas Supreme Court, in construing this act, substantially held that the act in question created a new corporation, and therefore that the general act of 1854 did not apply to it, for the reason that it was intended to apply to corporations then in existence. (G., H. & S. A. R'y Co. vs. State, 87 Texas, 352-4.)

The only question remaining is to consider whether the new corporation had acquired the rights of the old. If it be conceded that it did acquire the rights of the sold out corporation, it becomes necessary to inquire what those rights were. Remembering that the act under which the land is claimed was passed January 30th, 1854, the Buffalo Bayou, Brazos & Colorado Railway Company was authorized to accept the terms of the general act by a special act approved February 4th, 1854, which reads as follows:

"Be it enacted by the legislature of the State of Texas: That the Buffalo Bayou, Brazos & Colorado Railway Company shall be entitled to all of the rights, privileges and benefits accruing from any general law or laws that have or may hereafter be passed by this State to encourage the construction of railways, in the same manner and to the same extent as if the gauge of said road was the same now fixed, or which may hereafter be fixed upon by this State." Special Acts 1854, p. 69.

To that was added, on the same date, the following supplement:

"SECTION 1. Be it enacted by the legislature of the State of Texas: That if the Buffalo Bayou, Brazos & Colorado Railway Company shall avail itself of the act to which this is a supplement, or accept any donation of land from the State, they shall not be entitled to receive any such donations from the State under the provisions of this law, or any law that has heretofore been passed for their benefit, for any portion of their road which shall not be completed and ready for use within ten years from and after the passage of this act. Provided, that such company shall restrict itself to the following route, viz: To an extension of their existing road to Austin, in the county of Travis, across the Brazos river at any point between the town of Richmond, in Fort Bend County, and Hidalgo Falls, in Washington County; and with the right to extend their road from Austin to connect with any road running north of Austin towards the Pacific ocean; provided, that such con-

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nections be made between the 96th and 98th parallels of longitude; and provided further, that said company shall have no right to build branches from their main line."

These two acts passed on the same date, the one authorizing the road to accept the benefits of the general act, and the other restricting its rights thereunder, must be construed as a whole —indeed as the same act. By these two acts must the rights of the "sold out" company be measured. There can be no doubt about what they are. The company was authorized to build a road to Austin, in the county of Travis, and extend northward to some line of road going west to the Pacific ocean; and further provided, that the company should have *no right to build branches* from its main line. The old company, then, had no right to build the road in question. It had no right to build any branch lines.

The case, then, stands this way: The State contracted with the "sold out" company to the effect that if it build a line of road to Austin, Texas, that it would give to the road sixteen sections of land per mile. But the State was careful to stipulate that the railroad company must restrict itself to this particular line; and further, that no branch roads should be built. This was the legal status of the State and the sold out company. Now, a new corporation was formed. That corporation had no right to build the road in question. Therefore, the old corporation had no right to earn land for building the road in question. The State never contracted with it to build that road, but a different one. It is too clear for argument, therefore, that the old "sold out" company had no right to earn lands that the new company claimed under this act, and therefore the new company cannot claim these lands under any assignment of the old contract, or any acquisition of the rights of the old company. Section 12 of the charter of the new company emphasizes this point. It provides:

"That nothing in this act contained shall be construed as reviving or renewing any land grant to said company for road hereafter to be completed, which it does not possess by existing law."

As the old company did not possess the right by existing law

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to build a branch line, nor to build the road in question, then section 12 of the charter applies, and absolutely prohibits it from earning. It is therefore clear that the acts of the Texas legislature cannot be properly construed without reaching these conclusions:

First.—That the Buffalo Bayou, Brazos & Colorado Railway Company denominated the "old" company, or "sold out" company, is not identical with the Galveston, Harrisburg and San Antonio Railway Company. They are separate and distinct corporations.

Second.—That the old, sold out company, had no right to build a line of railroad from Columbus to San Antonio, and thence west, but was expressly restricted to a line extending northward to Austin, and thence north to intersect with a road leading to the Pacific ocean, near parallel 96 of longitude.

Third.—That in creating the new corporation, the charter expressly negatived the idea that it was the intention of the legislature to deny it any land grants.

Fourth.—That the authority to build the road from Columbus to San Antonio for which the land is herein claimed, was not given, and no contract authorizing its construction was made by the company until 1870, at which time the Constitution of Texas forbade the granting of lands to railroad companies.

From these conclusions, another necessarily follows, and that is, that in as much as the State of Texas had entered into no contract with the Galveston, Harrisburg & San Antonio Railway Company by which it agreed to give it land for the construction of a line of road from Columbus to San Antonio, and thence west, prior to 1870, there was no contract for the Constitution of 1869 to operate upon, and therefore there was none for it to impair.

SECOND COUNTER-PROPOSITION UNDER ABOVE ASSIGNMENTS OF ERROR.

Section 11 of the act in question did not carry with the new company the right to earn land grants even if it existed in the old.

Authorities:

Memphis & Little Rock R. R. Co. vs. R. R. Commission, 113 U. S., 465.

Memphis & Little Rock R. R. Co. vs. R. R. Commission, 112 U. S. 609

Bank of Commerce vs. Penn. 163 U. S. 416, 4

FIRST COUNTER-PROPOSITION UNDER FOURTH AND FIFTH ASSIGNMENTS OF ERROR.

The Court of Civil Appeals did not err in holding that the Galveston, Harrisburg & San Antonio Railway Company was not entitled to the land in question by reason of its having constructed the railroad from San Antonio west to El Paso, for which it had received no land, although the statute since 1876 authorized it to earn land for such construction, which statute was repealed in 1882. Because the certificates which were located on the land in question were issued for building a railroad from Columbus to San Antonio.

Statement: The record clearly discloses without any contradiction that the railroad acquired the certificates in question for constructing the road between Columbus and San Antonio. That these certificates so acquired were located on the land in question; and the land was surveyed by virtue of these certificates. (Record pp. —, —.) No certificates were obtained for the construction of the road west of San Antonio. The laws of Texas have always required the issuance of certificates by the land department, and the location and survey by proper officers. If the certificates are invalid, or the surveys are not made, the title to the land fails.

Authorities:

Bacon & Graves vs. State of Texas, 165 U. S., ——

G. H. & S. A. R'y Co. vs. State of Texas, 89 Texas, 340.

Argument: Put most strongly for plaintiff in error, the case may be fairly stated in this form: The plaintiff in error sought and obtained land certificates for building the road from Columbus to San Antonio, and had these certificates located on the

Parrall vs. Great Northern Ry. Co. 161 U. S. 646 - 65-9.

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lands in question. The land was surveyed, field notes returned to the general land office, etc. The State officers had no authority to issue the certificates in question, because the Constitution absolutely forbade the same. The section in question reads as follows:

"The Legislature shall not hereafter grant lands to any person or persons nor issue any certificates for land by sale at the land office, except to actual settlers upon the same, and in lots not exceeding 160 acres." Sec. 6, Art. X, Constitution of 1869. Sayles' Texas Statutes, Vol. 4, p. 444.

It is plain, therefore, that no title was obtained to the land in question, by these acts. Plaintiff in error subsequently build a line of road west from San Antonio. It did not obtain any certificates therefor. Not having obtained any land certificates, of course they did not have the land in question surveyed. It seems too clear for argument that the title to Texas lands cannot be obtained in that way. The court's attention is particularly called to the opinion of the Supreme Court of the State upon this question. Questions were certified by the Court of Civil Appeals to that court for instruction. The question upon this point was as follows:

"Question 3. If the laws as to land grants to railroads passed prior to 1869 were repealed by the Constitution of that year, can appellant interpose and maintain in this suit the equitable defense that if the certificates issued for that portion of the road between the Colorado and the Guadalupe rivers from 1870 to 1876 were illegally obtained, that the State is in no position to ask the relief sought by reason of the fact that appellant has earned the certificates for said 163 miles of road?" To this question the Supreme Court responded:

"Referring to the third question certified by the Court of Civil Appeals, we are of the opinion that it is no defense to an action of the State for the recovery of the lands involved in this suit, that the company may have been entitled to certificates for the 163 miles of additional road constructed under the law of 1876. It acquired no title either legal or equitable to the lands in controversy by causing them to be surveyed and patented under the certificates granted for the San Antonio extension. To make its right to lands earned by the additional construction effectual for any purpose, it must have procured its certificates and located them upon some portion of the public

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domain not reserved from the location of such certificates. Our complicated and ever varying laws in regard to the appropriation of the public domain have probably given rise to more questions affecting the location of lands than have ever arisen in any other jurisdiction, and yet we know of no case in this court in which it has ever been ruled that the claimant of land against the State under a location made by virtue of a void certificate has any equity in the premises by reason of being the possessor of another valid certificate." G., H. & S. A. Ry. Co. v. State of Texas, 89 Texas, 340 350, 355-56.

Such is the settled law of the land.

To further illustrate the absurdity of this contention of the plaintiff in error, let us suppose that the Galveston, Harrisburg & San Antonio Railway Company did construct a number of miles of railroad west of San Antonio, and that it was constructed in accordance with the laws of Texas, whereby it became entitled to certificates for sixteen sections of land per mile. Let us further suppose that it applied to the land department for these certificates and obtained them, but failed to have them located on any Texas lands. That is to say, failed to apply to the surveyor and have some definite portion of the public domain surveyed and field notes returned to the land office so that the evidence of the appropriation might be by the land department issued to the railroad company. It must be too plain for argument that under the decisions of the State courts the railroad company can not thereby acquire any title to any land. It must be remembered that this contention of plaintiff in error is based upon the statute of 1876. The Constitution, therefore, of 1875, applied in that case. That Constitution, in dealing with this question, contained the following provision:

"All genuine land certificates hereafter issued by the State shall be surveyed and returned to the general land office within five years after issuance, or be forever barred." (Latter part of Sec. 2, Art. XIV, Texas Constitution of 1875; Sayles' Texas Statutes, Vol. 4, p. 573.)

It is plain, therefore, that if these certificates had been obtained and not located on the land, they would have been forever barred. Surely by not applying for land certificates, they would be in no more favorable situation than if they had applied and obtained them, and failed to have them located. But be

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this as it may. It is clear that no land could be patented in Texas at any period of its history unless the certificates were first obtained, the land surveyed by virtue of these certificates, the field notes returned to the land office so that it might be appropriated by the State to the use of the particular individual thus seeking to obtain it.

Authorities:

FIRST COUNTER-PROPOSITION UNDER SIXTH AND SEVENTH ASSIGNMENTS OF ERROR.

The court did not err in holding that the Act of 1882, which repealed the act of 1876, granting sixteen sections of land per mile to railroads, did not impair the contract of plaintiff in error, which was involved in this suit. Because the lands in question were not sought to be appropriated in the way pointed out by the laws of Texas as earned under the Act of 1876, but as earned under the Act of 1854, and those amendatory and supplemental thereof.

Authorities:

The eighth, ninth, tenth and eleventh assignments of error are but reiterations of the same contention—that the plaintiff in error was entitled to the land in question by virtue of its constructing the road west of San Antonio. It is therefore not deemed necessary to add anything more in reference to it, except to repeat in as much as the issuance of land certificates and the location of the certificates, and the surveying of the land was, under the laws of Texas—the Act of 1876 as well as 1854—necessary to the acquisition of title; that in as much as no certificates were issued under the Act of 1876 and no surveys made, that therefore plaintiff in error has no right to any specific portion of Texas' public domain by reason of said Act of 1876. To ask this court to hold that the plaintiff in error may acquire title

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to the land in controversy by virtue of the construction of a railroad under the Act of 1876, although no certificates were obtained thereunder, no land surveyed thereunder, is equivalent to asking this court to qualify the provisions of the Texas Statutes which make the issuance of the certificate and the location thereof on specific portions of her territory as conditions precedent to the obtaining of any title, either legal or equitable, from the State, to be null and void. This I apprehend this court will not do.

FIRST COUNTER-PROPOSITION UNDER TWELFTH ASSIGNMENT OF ERROR.

The Court of Civil Appeals did not err in affirming the judgment in question.

Statement: For statement, see statement of the case.

Respectfully submitted,

M. M. CRANE, Atty.-Gen'l.,
Attorney for Defendant in Error.

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Clerk's Office
Sup. Ct. U.S. Cases No. 10,634
Filed Jan. 25, 1898.

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JAMES H. McKENNEY,
CLERK

Supreme Court of the United States.

OCTOBER TERM, 1897.

No. 171.

THE GALVESTON, HARRISBURG AND SAN ANTONIO RAILWAY COMPANY AND E. P. HILL AND W. H. SHAW, PLAINTIFFS IN ERROR,

vs.

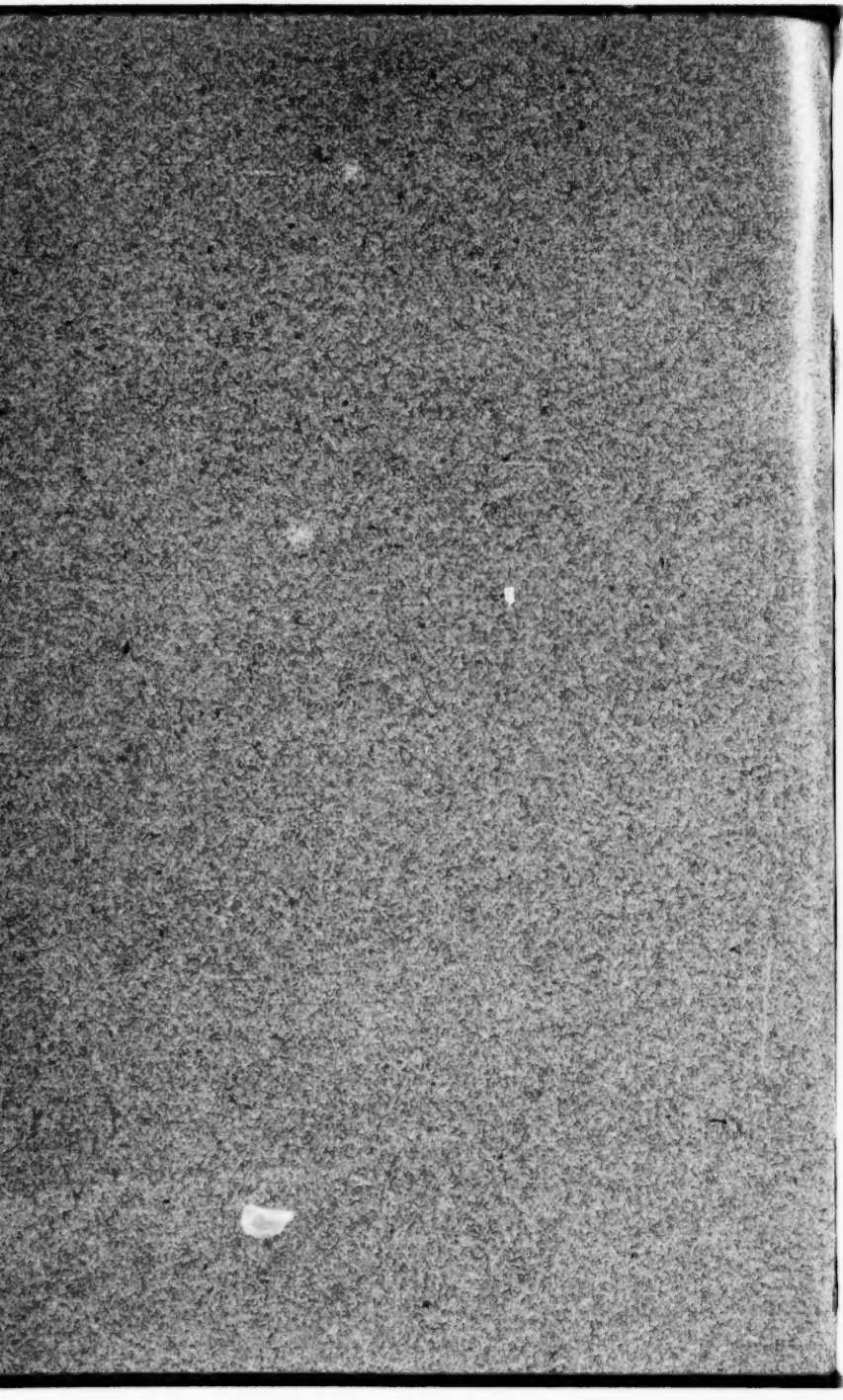
THE STATE OF TEXAS,

IN ERROR TO THE COURT OF CIVIL APPEALS OF THE FOURTH SUPREME JUDICIAL DISTRICT OF THE STATE OF TEXAS.

Supplemental Brief of Defendant in Error, by M. M. Crane, Counsel for the State of Texas.

(No. 16,634.)

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 1-25-98



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(No. 16,634.)

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1897.

No. 421.

THE GALVESTON, HARRISBURG AND SAN ANTONIO RAILWAY COMPANY AND E. P. HILL AND W. N. SHAW, PLAINTIFFS IN ERROR,

vs.

THE STATE OF TEXAS.

IN ERROR TO THE COURT OF CIVIL APPEALS OF THE FOURTH SUPREME JUDICIAL DISTRICT OF THE STATE OF TEXAS.

Supplemental Brief of Defendant in Error, by M. M. Crane, Counsel for the State of Texas.

An examination of the various acts of the legislature contained in the brief of the plaintiff in error will disclose the following:

1st. That the Buffalo Bayou, Brazos and Colorado Railway Company was chartered by special act of the Texas

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legislature February 11, 1850. (General Laws, 3d Legislature of Texas, pp. 194 to 198; Appendix to Brief of Plaintiff in Error, pp. I to VII, inclusive.)

2d. That no land grant was embodied in the charter.

3d. That eight sections of land per mile were granted to said road by amendment of its charter, approved January 29, 1853, and that this amount secured by the charter was abandoned in lieu of the large amount granted by the general act of 1854. (See Special Laws passed at extra session of 4th Texas legislature, pages 3 to 5; Appendix to Brief of Plaintiff in Error, pages IX to XII.)

4th. That a general law was passed on the 30th of January, 1854, granting sixteen sections of land per mile to all railroads within the State thereafter constructing roads. (Gen'l Laws, 5th Tex. Legislature, pp. 11 to 15; Appendix to Brief of Plaintiff in Error, pp. XI to XVIII.)

5th. That the Buffalo Bayou, Brazos and Colorado Railway Company was by a special act of the legislature of Texas approved February 4, 1854, permitted to accept the provisions of the general act of January 30, 1854. (Special Laws, 5th Tex. Legislature, p. 69; Appendix to Brief of Plaintiff in Error, p. XIX.)

6th. On the same date, to wit, February 4, 1854, another supplementary act was passed by the Texas legislature providing in substance that if the Buffalo Bayou, Brazos and Colorado Railway Company shall avail themselves of the last above named act and accept any donations of land from the State, then the said company shall restrict themselves

to the following route: To an extension of their existing road to Austin, in the county of Travis, crossing the Brazos river at any point between the town of Richmond, in Fort Bend county, and Hidalgo Falls, in Washington county, and with the right of extending their road from Austin to connect with any road running north of Austin toward the Pacific ocean, but with no authority to build any branch line. (Special Laws, 5th Tex. Legislature, p. 70; Appendix to Brief of Plaintiff in Error, pp. XIX, XX.)

7th. That the act of 1854 was extended by the act of November 13, 1866, for a period of ten years. (Gen'l Laws, 11th Tex. Legislature, p. 212.)

8th. That the Buffalo Bayou, Brazos and Colorado Railway Company had been sold out under an execution and deed of trust and their property purchased by others, and that these purchasers had formed a *new* company, which was called by the old name. (Appendix to Brief of Plaintiff in Error, pp. XXV to XXX.)

From the foregoing it is plain that the Buffalo Bayou, Brazos and Colorado Railway Company, or the old "sold-out" corporation, relied upon the general act of 1854 for the lands claimed therein, and the record discloses this fact. (See Record, p. 40.)

The question raised, therefore, in Davis *vs.* Gray is not involved in this case. In that case the railroad company had, by the stipulations of its charter which it had accepted from the State, contracted for the right to build its road and secure a grant of land for each mile thereof; in this case the old corporation relied upon the general laws which the State had a right to repeal at any time. This is more ap-

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parent when we remember that none of these acts granting lands to the railroad companies exacted anything more from them than the performance of the duties which would be incumbent upon a railroad company without a land grant. The grant was, therefore, a gratuity. (Salt Company *vs.* East Saginaw, 13th Wallace, 373, 376.)

9th. The act of 1870, which really incorporated the plaintiff in error company, did not issue any additional land grants. (See section 12 of that act.) This language is used in that section:

"*Provided* that nothing in this act contained shall be construed as reviving or renewing any land grants to said company for road *hereafter* to be completed which it does not possess by existing law."

ARGUMENT.

I will not repeat what has already been heretofore said in brief and at bar to the effect that the land grant was limited by the express terms of these acts to the road to be built to Austin by the old company and *not in the direction of San Antonio.* That was the contract between the State and the defendant. If it be regarded as completely assigned to the new corporation, it could not carry with it the right to land granted for the completed road westward to San Antonio. The contract assigned to the new corporation could not have extended beyond its original terms. It could not do more than authorize the new company to fulfill the old contract—that is, to build the road to Austin and get the land therefor.

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Had the new corporation constructed the old line of railroad to Austin for which the State had promised a land grant, this question would then fairly be raised, but inasmuch as it did not construct that line of road, but an entirely different one, it is too plain for argument that the land grant does not follow the new line of road. It cannot be extended by implication. The State made no contract with the new corporation, because the new corporation did not exist until the power of the State to grant lands to railroads was taken away. So far as the new corporation is concerned, it is fairly within the rule laid down in Pearsall *vs.* Great Northern Railway Co., 161 U. S., 659, 666, and cases therein cited.

The grant, to be effective, must be expressed in clear and unambiguous language. (Fertilizer Company *vs.* ——, 97th U. S., 659, 666.)

Every reasonable doubt is solved against the corporation; "Silence is negation and doubt is fatal to the claim." Such is the language of this court in the case last cited.

It is plain, therefore, that the constitution of 1869 rendered it impossible for the State, through any of its departments, to make any grants of land, and it is equally plain that, inasmuch as the right of the old company to the land rested upon the general statute, its repeal by the adoption of the constitution did not impair the obligations of the contract within the meaning of the Constitution of the United States as interpreted by this court.

But it is insisted that because the plaintiff in error earned lands under the act of 1876, that therefore they ought to be able to retain these specific lands in this litigation to satisfy the claim made under a different statute. In other words, they are in the situation of a defendant or respondent in a

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court of equity asking to have another and a different contract specifically enforced. It is necessary, therefore, to understand what the contract is upon which this claim is based. The act of 1876 provides in substance that the legislature of the State of Texas shall give to every railroad of Texas sixteen sections of land per mile for all road which should be thereafter completed. The land would be obtained as follows:

First. Upon the completion of certain sections of the road therein designated an engineer should be appointed to inspect same, and if he reports favorably the Commissioner of the General Land Office shall issue to the company sixteen certificates of 640 acres of land each for every mile of road so completed. Then it was the duty of the company to apply to the district surveyor of any land district in the State to survey such lands out of any unappropriated land in the district of said surveyor. Said survey should be made in alternate sections or half sections, as nearly square as practicable, one section for the company, etc. The field-notes of this survey, together with the maps, should be returned to the land office by the railroad company, whereupon patents shall be issued for the odd sections of the said surveys.

The contract under the act of 1876, provided that all of its terms were complied with by the railroad company, required two things to be done by said railroad company: First, the completion of the road; then after an inspection by the engineer to have the land surveyed, mapped, and the field-notes returned to the land office, after which it became the duty of the State to issue patent, not before; out in no event could patents be issued to lands that were

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not surveyed and mapped under the provisions of this act. It is plain, therefore, that if this court undertakes to enforce the specific performance of any contract, it must enforce the contract which the parties themselves made; and, inasmuch as Texas had never agreed to give the plaintiff in error the lands involved in this case for the construction of the road under the act of 1876, this court cannot decree that these lands must be given unless language be read into the contract which was not in contemplation by either party at the time the contract was made. It would be the enforcement of a contract different from any that was made or from any that could be made by virtue of the authority of the statutes of Texas.

This court has twice decided that no title can be obtained from the State of Texas to any of her lands unless the terms of the statute under which title is sought should be fully complied with, and if the statute requires surveys to be made and field-notes to be returned to the land office before title can be obtained, that rule must be complied with or the State will recover the lands, no matter if money has been paid into the State for the lands thus sought to be purchased. (Bacon *vs.* Texas; Telfner *vs.* Russ. 16 U.S.)

Bacon and Graves had tried to get Texas lands for the Houston and Texas Central Railway Company. The railroad company, represented by Olcott in this court, paid money into the State treasurer and adopted the field-notes of the previous surveys made by the Houston and Texas Central Railway Company; they had paid for the land and could not get it because they had not complied with the terms of the act.

How much better off was the plaintiff in this case by con-

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structing the road from San Antonio west than it would have been had it purchased the land and paid money to the State under the act requiring survey to be made and field-notes returned before title could be acquired? Does the building of the road imply a more sacred obligation on the part of the State of Texas to give these lands to the railroad company than could be created by the payment of cash into the treasury of the State? To ask the question is to answer it. If a survey is necessary where money is paid, how much more should it be necessary where the grant of lands is a pure donation on the part of the State.

The utmost that this court could do under circumstances most favorable to the plaintiff in error would be to decree a specific performance of the contract under the act of 1876. That would require on the part of the State an inspection of the roads by the State officers and the issuance of land certificates. But no such relief was asked in the court below nor in this court. Hence it cannot be given. Their answer does not ask it. It is not necessary therefore to discuss that further; but surely the court cannot give to plaintiff in error land under a contract which does not authorize this court to give it any particular lands, but only land certificates, which it may or may not locate elsewhere.

I respectfully submit that, unless the rule be abrogated which authorizes each State to make its own regulations for the conveyance of real estate, the relief asked for by plaintiff in error cannot be granted.

M. M. CRANE,
Counsel for the State of Texas.

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Syllabus.

GALVESTON, HARRISBURG AND SAN ANTONIO RAILWAY COMPANY *v.* TEXAS.

ERROR TO THE COURT OF CIVIL APPEALS FOR THE FOURTH SUPREME JUDICIAL DISTRICT OF THE STATE OF TEXAS.

No. 421. Argued January 21, 24, 1898. — Decided April 25, 1898.

When it does not appear from the plaintiff's statement of his case, that the suit was one arising under the Constitution and laws of the United States, a petition to remove the cause into the Circuit Court of the United States should be overruled.

The provision in the constitution of Texas of 1869, that the legislature should not thereafter grant lands to any person or persons, as enforced against the Galveston, Harrisburg and San Antonio Railway Company, the successor of the Buffalo Bayou, Brazos and Colorado Railway Company, which had received grants of public land under previous legislation to encourage the construction of railroads in that State, involved no infraction of the Federal Constitution.

A clause in a charter of a railroad company, granting it power to consolidate with or become the owner of other railroads, is not such a vested right that cannot be rendered inoperative by subsequent legislation, passed before the company avails itself of the power thus granted.

The question in this case was as to whether the railroad company was entitled to the particular lands in controversy by virtue of the location thereon of certificates issued for building the road from Columbus to San Antonio. The ruling was that, as the law stood, no title was acquired thereby, and the State was entitled to recover. But it was also contended that no recovery could be had because the company had earned other lands of which it had been, as it alleged, unlawfully deprived. The Supreme Court of the State held that it was no defence to the suit, by way of set-off, counter-claim, or otherwise, that the company might have been entitled to land certificates for road constructed under the law of 1876, and said that it had "never been ruled that the claimant of land against the State under a location made by virtue of a void certificate has any equity in the premises by reason of being the possessor of another valid certificate." *Held*, that in arriving at this conclusion the state courts did not determine whether as to those other lands any vested right of the railway company had or had not been impaired or taken away; and that this court cannot hold that the company was denied by the judgment of those courts in this respect any title, right, privilege or immunity secured by the Constitution or laws of the United States.

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Statement of the Case.

THIS was a suit commenced on behalf of the State of Texas against the Galveston, Harrisburg and San Antonio Railway Company, in the District Court of Brewster County, to recover 1383 tracts of land, containing in the aggregate eight hundred and seventy-nine thousand and seventy-eight acres, situated in various counties, and to cancel certificates and patents issued to the railway company therefor. The railway company filed a petition for the removal of the cause to the Circuit Court of the United States, which was overruled. The company then presented its defences by demurrer, plea and answer, relying on its charters, and the laws, general and special, of the State of Texas, by reason whereof and action thereunder, it asserted it had become entitled to the lands in question; also setting up that it had in 1880 mortgaged the land in controversy to Andrew Pierce and George F. Stone; that Pierce was dead, and that Stone was the sole surviving trustee and was a necessary party to the suit; and the grounds on which it insisted that the State was estopped from recovering the lands; and in its answer prayed for affirmative relief.

The cause was tried, and judgment entered therein in favor of the State of Texas, and was thereupon carried by appeal to the Court of Civil Appeals for the Fourth Supreme Judicial District of the State of Texas, which court then certified the following statement and questions to the Supreme Court of the State for adjudication:

"The State of Texas instituted suit against appellant to cancel certain land certificates and patents issued by the State to appellant, for land, amounting to $879{,}078\frac{1}{20}$ acres. It was alleged and proved that the certificates and patents were issued to the Galveston, Harrisburg and San Antonio Railway Company, for a portion of its railroad constructed between the Colorado River and Guadalupe River between the time of the adoption of the constitution of 1869 and the passage of the act of August 16, 1876 (arts. 4267 to 4277, Rev. Stats.). On July 27, 1870, by special act of the legislature, appellant was chartered and recognized as the successor of the Buffalo Bayou, Brazos and Colorado Railway Company. After the passage of the act of August 16, 1876, and before its repeal,

in 1882, appellant constructed about 163 miles of railroad, from San Antonio westward towards El Paso, for which the State refused to issue land certificates, the governor refusing the application for inspection on May 22, 1882, on the ground that the law granting certificates had been repealed.

"Question 1. Did section 6, article X, of the constitution of 1869 repeal all laws giving railroad companies the right to earn lands from the State by the construction of railroads; and, if so, would this repeal apply as well to the right to earn lands given through charters as through general laws?

"Question 2. If the above be answered in the negative, did appellant succeed to the rights of the Buffalo Bayou, Brazos and Colorado Railway Company by virtue of the special act of 1870, said Buffalo Bayou, Brazos and Colorado Railway Company being restricted by special act of February 11, 1854, to run its line to Austin?

"Question 3. If the laws as to land grants to railroads passed prior to 1869 were repealed by the constitution of that year, can appellant interpose and maintain in this suit the equitable defence that if the certificates issued for that portion of the road between the Colorado and the Guadalupe Rivers, from 1870 to 1876 were illegally obtained that the State is in no position to ask relief sought by reason of the fact that appellant has earned certificates for said 163 miles of road?

"Question 4. If the last question be affirmatively answered, would the fact that at the time the land for the 163 miles west of San Antonio was earned by appellant, the public lands were exhausted, affect the equities of the case?"

The Supreme Court was of opinion "that the Galveston, Harrisburg and San Antonio Railway Company did not by virtue of the act of July 27, 1870, acquire the right to earn lands by the construction of its line to San Antonio." This answered the second question and rendered an answer to the first unnecessary.

As to the third question, the Supreme Court was "of the opinion that it is no defence to an action of the State for the recovery of the lands involved in this suit, that the company may have been entitled to certificates for the one hundred and

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sixty-three miles of additional road constructed under the law of 1876." The fourth question, therefore, required no answer.

The case is reported, 89 Texas, 340.

The opinion of the Supreme Court having been transmitted to the Court of Civil Appeals, that court proceeded to dispose of the case, and held that there was no error in the refusal to remove the cause; that Stone was not a necessary party to the suit; that the State of Texas was not estopped, by "the illegal acts of the land commissioner in granting the land certificates and of the governor in granting patents to the land," from recovering the lands sued for; and overruled the other assignments of error in view of the answers of the Supreme Court to the questions propounded. Thereupon the judgment of the District Court was affirmed. A motion for rehearing having been made and overruled, the company applied to the Supreme Court for a writ of error, which was denied, whereupon a writ of error from this court was allowed by the Chief Justice of the Court of Civil Appeals.

The Buffalo Bayou, Brazos and Colorado Railroad Company was incorporated by an act approved February 11, 1850, c. 156, and authorized to construct and maintain a railroad as therein described. Laws Tex. 1849–50, pp. 194, 198.

By an act approved January 29, 1853, the route was defined as follows: "Commencing at a suitable point on Buffalo Bayou in the county of Harris, thence running by such course and to such point or points at or near the Brazos and Colorado Rivers, or across the same as said company shall deem advisable, with the privilege of making, owning and maintaining such branches to said road as they may deem expedient." By the second section of this act there was "granted to said company eight sections of land, of six hundred and forty acres each, for every mile of railway actually completed and ready for use," for which the commissioner of the general land office of Texas was authorized to issue certificates under restrictions mentioned, and upon location and survey patents were to be issued as provided. Special Laws, 1853, p. 3.

On January 30, 1854, the legislature passed a general land grant act, entitled "An act to encourage the construction of

railroads in Texas by donations of lands." c. 15. Section 1 provided "that any railroad company chartered by the legislature of this State, heretofore or hereafter, constructing within the limits of Texas, a section of twenty-five miles or more of railroad, shall be entitled to receive from the State a grant of sixteen sections of land for every mile of road so constructed and put in running order." Railroad companies applying for land under this act were required by section 3 to cause the land to be surveyed into sections of 640 acres each, and in square blocks of not less than six miles, and the field notes of the survey and map or maps to be deposited with the Commissioner of the General Land Office. Section 6 related to patents, certificates, surveys, etc.

By section 11 all the alternate or even sections of lands surveyed in pursuance to the provisions of this act were "reserved to the use of the State, and not liable to locations, entries or preëmption privileges, until otherwise provided by law." Section 12 provided: "That the provisions of this act shall not extend to any company receiving from the State a grant of more than sixteen sections of land, nor to any company for more than a single track road, with the necessary turnouts; and any company now entitled by law to receive a grant of eight sections of land per mile for the construction of any railroad, accepting the provisions of this act, shall not be entitled to receive any grant of land for any branch road; provided, this act shall not be so construed as to give to any company now entitled by law to receive eight sections of land, more than eight additional sections; provided, that no person or company shall receive any donation or benefit under the provisions of this act, unless they shall construct and complete at least twenty-five miles of the road contemplated by their charter within two years after the passage of this act;" etc., and that the act should continue in force for the term of ten years from the time it shall take effect and no longer. Laws, 1854, p. 11.

On the same day a supplemental act was approved providing that no railroad company benefited by the act should receive any donation of land under its charter, or under the

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act of which this was a supplement, for any work not done within ten years after the passage of the act. Laws, 1854, p. 16.

By a special act of February 4, 1854, c. 45, the charter of the Buffalo Bayou, Brazos and Colorado Railroad Company was amended, and it was provided that the company should be "entitled to all the rights, privileges and benefits accruing from any general law or laws that have or may hereafter be passed by this State to encourage the constructing of railroads, in the same manner and to the same extent as if the gauge of said road was the same now fixed, or which may be hereafter fixed upon by this State." Spec. Laws, 1854, p. 69. On the same day another special act was passed providing "that if the Buffalo Bayou, Brazos and Colorado Railroad Company shall avail themselves of the act to which this is a supplement, or accept any donation of land from the State, they shall not be entitled to receive any such donation from the State under the provisions of this law or any law that has heretofore been passed for their benefit, for any portion of their road which shall not be completed and ready for use within ten years from and after the passage of this act. Provided, that said company shall restrict themselves to the following route; viz., to an extension of their existing road to Austin, in the county of Travis, crossing the Brazos River at any point between the town of Richmond, in Fort Bend County, and Hidalgo Falls, in Washington County, and with the right of extending their road from Austin to connect with any road running north of Austin towards the Pacific Ocean. Provided, such connections be made between the ninety-sixth and ninety-eighth parallels of longitude; and provided, further, that said company shall have no right to build branches from their main road." Spec. Laws, 1854, p. 70.

During the period of the civil war, two laws were passed which had the effect to relieve the existing railroad companies from the limitations as to time embraced in the act of January 30, 1854, until two years after the close of the war. Laws, 1862, p. 43, c. 62, Jan. 11, 1862; p. 46, c. 69, Jan. 11, 1862.

Statement of the Case.

On November 13, 1866, an act, c. 174, was approved to this effect: "That the grant of sixteen sections of land to the mile to railroad companies, heretofore or hereafter constructing railroads in Texas, shall be extended, under the same restrictions and limitations heretofore provided by law, for ten years after the passage of this act." Laws, 1866, p. 212.

The state constitution of 1869 was adopted December 3, 1869, and accepted by Congress March 30, 1870, the sixth section of article X of which instrument read as follows: "The legislature shall not hereafter grant lands to any person or persons, nor shall any certificates for land be sold at the land office, except to actual settlers upon the same, and in lots not exceeding one hundred and sixty acres."

July 27, 1870, the legislature passed an act entitled "An act supplementary to the act to incorporate the Buffalo Bayou, Brazos and Colorado Railway Company, and to the other special acts relating to said company." The preamble recited:

"Whereas, on the seventh of July, 1868, 'the roadbed, track, franchise and chartered rights and privileges' of the Buffalo Bayou, Brazos and Colorado Railway Company were sold on executions issued on judgments against said company; and on the twenty-fourth January, 1870, the railroad of said company from Harrisburg to Alleyton, and its franchise, rights and other property appertaining thereto, were sold under the provisions of a mortgage or deed of trust made by said company on the first November, 1860, all of which appears of record; and whereas, the act of December 19, 1857, 'supplementary to and amendatory of an act to regulate railroad companies,' provides that the purchasers at such sales, and their associates, 'shall be entitled to have and exercise all the powers, privileges and franchises granted to' the company sold out 'by its charter, or by virtue of the general laws of this State;' and 'shall be deemed and taken to be the true owners of said charter and corporators under the same, and vested with all the powers, rights, privileges and benefits thereof;' and whereas, the purchasers at said sales, and their associates, have formed a new company under said old name, and have expended large sums of money in the reconstruction of said railroad, in the

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purchase and completion of the Columbus Tap Railroad, and the bridge of the Brazos Iron Bridge Company over the Brazos River at Richmond; and whereas, said new company desires to be distinguished by name from said 'sold-out' company, to consolidate its property, and to extend said line of railroad."

Section 1 provided:

"That the new company heretofore known as the Buffalo Bayou, Brazos and Colorado Railway Company, referred to in the preamble of this act, shall be hereafter known by the corporate name of 'The Galveston, Harrisburg and San Antonio Railway Company,' and may alter its seal to conform to its name; provided, that said new company shall be liable to the State of Texas for the debt of said 'sold-out' company for loans made to the latter company from the special school fund, in the same manner and to the same extent as said 'sold-out' company was liable; and that said change of name shall in no respect impair or affect said liability, or the existing lien or mortgage of the State upon the railroad of said company as security for said loans. Also, provided, that said change of name shall in no respect impair or affect any of the obligations of said new company to other parties, or the obligations of other parties to said new company; all of which may be enforced by or against said new company under said new name."

Section 3:

"That said new company is hereby authorized to extend the existing line of railroad owned and operated by said company from Columbus, in Colorado County, to San Antonio, in the county of Bexar, within four years from the passage of this act; and thence to a terminus on the Rio Grande, by such route as the directors shall deem most feasible, with a branch from the most suitable point to New Braunfels, in Comal County, within four years from the passage of this act; or said new company may connect with any line of railroad that may be constructed or under construction to San Antonio or the Rio Grande, south of the latitude of the city of Austin and the Colorado River instead of building its own line beyond the point of such connection; and may build to and connect with any line of railroad that may be constructed, or

under construction, and designed to form part of any railroad line to the Pacific, south of the thirty-fifth parallel of latitude; nothing herein being so construed as to exclude said new company from the right to construct also, any part of the line up the Colorado Valley, formally designated by said 'sold-out' company as its route under the provisions of the eleventh section of the act of December 19, 1857; provided, that if the said road shall not be completed within the time specified in this section, then this charter shall be forfeited."

Sections 11 and 12:

"SEC. 11. That said new company shall be entitled to the same or similar rights and relief, except state aid in bonds, or indorsement of, or guarantee of interest on bonds, granted to or provided for any other railroad company by the legislature, and upon the same or similar terms and conditions, so far as such rights and relief are, in their character, applicable to said new company or its line or lines of railroad.

"SEC. 12. That nothing in this act shall be so construed as to deprive any party interested, of the right to disprove any assumed fact stated in the preamble; provided, that nothing in this act contained shall be construed as reviving or renewing any land grant to said company for road hereafter to be completed, which it does not possess by existing law." Spec. Laws, 1870, p. 45.

Section 6 of Article X of the constitution of 1869 was subsequently amended, the amendment taking effect March 19, 1873. The section, as amended, read as follows:

"The legislature of the State of Texas shall not hereafter grant lands except for purposes of internal improvement, to any person or persons, nor shall any certificate for land be sold at the land office, except to actual settlers upon the same, and in lots not exceeding one hundred and sixty acres; provided, that the legislature shall not grant, out of the public domain, more than twenty sections of land for each mile of completed work, in aid of the construction of which land may be granted; and provided further, that nothing in the foregoing proviso shall affect any rights granted or secured by laws passed prior to the final adoption of this amendment."

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August 16, 1876, a general law was enacted entitled "An act to encourage the construction of railroads in Texas by donations of lands," whereby it was provided that any railroad company theretofore chartered or which might be thereafter organized under the general laws of the State should, upon the completion of a section of ten miles or more of its road, be entitled to receive, and there was thereby granted to every such railroad from the State, sixteen sections of land for every mile of its road so completed and put in good running order. The act prescribed the usual formalities for ascertaining compliance on the part of railroad companies with the provisions of the act, the issue of certificates, etc. Laws, 1876, 153.

April 22, 1882, the legislature passed an act repealing all laws in force granting lands for the construction of railroads. Laws, 1882, 3.

Mr. Joseph Paxton Blair for plaintiffs in error. *Mr. James A. Baker* and *Mr. R. S. Lovett* were with him on his brief.

Mr. M. M. Crane, attorney general of the State of Texas, for defendant in error.

Mr. Chief Justice Fuller, after stating the case, delivered the opinion of the court.

1. The State of Texas, as owner of the lands in question, sought by its petition the removal of the cloud cast upon its title by reason of certain certificates and patents. The petition averred that those certificates were issued to the railway company for the construction of its road from the town of Columbus to the Guadalupe bridge during a period of time when there was no law in existence authorizing the issue of land certificates and patents, and charged that the action of the Commissioner of the General Land Office of the State in issuing and delivering the certificates, and permitting them to be located and surveyed upon the lands and returned to and filed in the General Land Office, and in the issue of the patents, was had and done wholly without authority of law and in

violation of the constitution and laws of the State. It did not appear from the State's statement of its case that the suit was one arising under the Constitution or laws of the United States, and the Court of Civil Appeals properly held that the petition to remove the cause into the Circuit Court of the United States came within the rule laid down in *Tennessee* v. *Union and Planters' Bank*, 152 U. S. 454, and subsequent cases, and that there was no error in overruling the application.

2. The railroad, franchises, rights and property of the Buffalo Bayou, Brazos and Colorado Railroad Company had been sold on execution and under foreclosure, and the purchasers at the sales and their associates had formed a new company under the old name. By the act of July 27, 1870, this new company was given the name of "The Galveston, Harrisburg and San Antonio Railway Company," to distinguish it from the "'sold-out' company;" was endowed with various franchises; and, among other things, was authorized to extend the existing line of railroad owned and operated by the company from Columbus, in Colorado County, to San Antonio, in the county of Bexar, and thence to a terminus on the Rio Grande.

At this time the constitution of Texas provided: "The legislature shall not hereafter grant lands to any person or persons, nor shall any certificates for land be sold at the land office, except to actual settlers upon the same, and in lots not exceeding one hundred and sixty acres."

The certificates and patents in question in this suit were issued to the company for a portion of its railroad constructed between the Colorado and the Guadalupe Rivers, under the act of July 27, 1870, and before the act of August 16, 1876, took effect.

Plaintiff in error contends that by virtue of the charter of the old company and the amendments thereto, and the general laws, prior to 1869, it had a vested and contract right to receive and hold these lands, which was impaired or of which it was deprived, in violation of section ten of Article I of the Constitution of the United States, and section one of the Four-

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teenth Amendment thereof, by section six of Article X of the state constitution of 1869, as given effect by the state courts.

The Supreme Court of Texas considered the legislation at length in replying to the questions propounded by the Court of Civil Appeals.

Conceding, for the purposes of argument, that the original company acquired a right to sixteen sections of land per mile of constructed railroad under the general law of January 30, 1854, and the special acts amendatory of its charter; that this right was preserved by the general law of November 13, 1866; and that section six of Article X of the constitution of 1869 did not operate to repeal either of those acts in respect of the right of existing companies to lands in aid of the construction of the lines of road specifically defined in their charters, the court was nevertheless unable to conclude that after the constitutional provision took effect an act of the legislature which authorized the company to change its former route and to construct a different line of road would carry with it the right to acquire land by the construction of the new line.

In its view the law of January 30, 1854, applied only to companies then chartered, and was intended to grant lands for the construction of those roads only which the companies were authorized by their charters to build. And while in the absence of any constitutional inhibition on granting lands in aid of railroads, it might be that legislative authority to a company to change its line could properly be treated as carrying with it the privilege of earning lands for the construction of the new line, this did not follow as to new routes authorized after such land grants had been forbidden by the fundamental law. And here the act of February 4, 1854, supplementary to the act of the same date which extended the privileges of the law of January 30, 1854, to the company, restricted those privileges to the line to Austin and to the extension of that line. If then the new company had succeeded to the right to acquire lands by the construction of the line fixed by the supplementary act, the construction of a different road in the exercise of the power given by the act of 1870 could not involve an obligation to furnish lands in aid of such construction.

And the court said: "The company, before the passage of the act of 1870, had no right to acquire lands by the building of a railroad to San Antonio; to complete that right, a new grant was requisite; but at that time the legislature was prohibited in the broadest terms from making any grant whatever. It matters not that the transaction may be looked upon as being somewhat in the nature of an exchange, and that the building of the new line may have involved a grant of no more, or even of less land, than may have been acquired by the construction of the old line. It involved a grant of land as to the new line and that the legislature had no right to make. Let us state the proposition in another form. If it were the right of the company, under the existing laws, to acquire lands by doing a specific thing, the legislature having no power under the constitution to make any grant of lands, could not confer upon it the right to earn lands by doing another — a different thing.

"So far we have discussed the question as if in passing the act of 1870 the legislature had intended to transfer the right of the company as to the lands to be acquired, from the old to the new line. But we find nothing in the act which manifests such an intention. On the contrary, the 12th section of the act as above quoted indicates, that it was not the purpose in any manner to extend the existing rights of the company with reference to the acquisition of lands from the State.

"It is to be noted that the 3d section of the act of 1870 not only authorized the company to change its route so as to run to San Antonio, instead of Austin, but in addition thereto reserved to it the right to build upon the route formerly designated by the sold-out company. It is evident, therefore, that to concede to the company the right to earn lands by the construction of the new line involves a new and additional grant — a grant which the legislature, under the constitution of 1869, could have made neither expressly nor by implication." *Railway Company* v. *State*, 89 Texas, 340, 354; *Quinlan* v. *Houston & Texas Central Railway*, 89 Texas, 356; *Galveston, Harrisburg & San Antonio Railway* v. *Texas*, 81 Texas, 572.

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In our judgment the constitutional provision as thus enforced involved no infraction of the Federal Constitution.

The Galveston Company was not identical with the Buffalo Bayou Company, but a new company in succession to the old.

The Buffalo Bayou Company became entitled to the benefits of the general law of January 30, 1854, by the first of the special acts of February 4, 1854, but by the supplemental special act of that date was restricted to the route to Austin, "with the right of extending their road from Austin to connect with any road running north of Austin towards the Pacific Ocean; provided, such connections be made between the ninety-sixth and ninety-eighth parallels of longitude; and provided further, that said company shall have no right to build branches from their main road."

Construing these two acts together, as we must, the contract between the State and the Buffalo Bayou Company would appear to have been that the company would build a line of road to Austin and northerly to some line of road going west to the Pacific Ocean, and the State would give the company sixteen sections of land per mile, but the company was restricted to the particular line and had no right to build branches from the main line. The State did not contract with the old corporation to build the road from Columbus to San Antonio, and the new company could not claim to earn lands by building this road, by virtue of what the old company had been empowered to do. The old company did not possess the right by existing law to build the road in question or branch lines, and the authority to construct it was not given until July 27, 1870, at which time the constitution of Texas forbade the granting of lands to railroad companies. And if there were no contract prior to July 27, 1870, to give land for the construction of a line of road from Columbus to San Antonio and thence west, the constitution of 1869 could not operate to impair any such.

But it is said that the right to a land grant of sixteen sections per mile under the act of 1854 had become a corporate franchise of the Buffalo Bayou Company, exercisable on every mile of road it might construct under competent legislative

authority; that it was subject in the first instance to a restriction as to route, which the legislature could at any time remove, and did remove by the act of July 27, 1870; and that the privilege of earning lands for the construction of the new line was included in the grant of authority to construct it. This is to assert that the Buffalo Bayou Company acquired by the legislation of 1854 a vested right to lands for the construction of whatever line of road, other than that then authorized and defined, it might in the future be empowered to build, though in the meantime the power to grant lands had been withdrawn from the legislature.

It is impossible to assent to such an application of the doctrine of vested rights. That subject was much considered and the authorities cited in *Pearsall* v. *Great Northern Railway Company*, 161 U. S. 646, and it was there held that a clause in a charter of a railroad corporation granting it certain powers to consolidate with or become the owner of other railroads was not such a vested right that it could not be rendered inoperative by a subsequent statute passed before the company had availed itself of the power granted. Provisions granting such rights or powers to a corporation, as observed in *Bank of Commerce* v. *Tennessee*, 163 U. S. 416, 425, "do not partake of the nature of a contract, which cannot for that reason be in any respect altered or the power recalled by subsequent legislation. Where no act is done under the provision and no vested right is acquired prior to the time when it was repealed, the provision may be validly recalled, without thereby impairing the obligation of a contract."

The Supreme Court of Texas did not hold that the right to construct the line defined in the second special act of February 4, 1854, and to earn lands by such construction, was affected by the constitutional provision; but held, in effect, that there could be no obligation, express or implied, to bestow lands for the construction of lines of road not authorized to be constructed until after the adoption of that provision.

The road from Columbus to San Antonio had not only not been constructed in 1869, but its construction had not been

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authorized; and no principle of contract or vested rights intervened to defeat the power of the State in 1869 to modify or even repeal the general law of 1854.

Argument was earnestly made at the bar that by reason of the amendment of section six of article X of the constitution of 1869 in 1873, and the subsequent passage of numerous acts granting land in aid of railroad construction, this company was entitled under section eleven of the act of July 27, 1870, which gave it the same rights or relief granted to other companies, to receive the certificates in controversy even though it was not entitled to them under previous legislation. That section apparently refers to existing rights or relief, and not to such as might afterwards be acquired or obtained. But this was matter of construction for the state courts, and was disposed of by the decision of the Court of Civil Appeals, on whose attention the point was pressed, though no allusion is made to it in the opinion of that court.

3. The constitutional amendment of 1873 having relieved the legislature of the restriction imposed by the constitution of 1869, the act of August 16, 1876, granted to railroad companies, on the completion of ten miles or more of their roads, sixteen sections of land for every mile so completed and put in good running order. On April 22, 1882, an act was passed repealing "all laws or parts of laws now in force granting lands or land certificates to any person, firm, corporation or company for the construction of railroads, canals and ditches." This act stated that the exhaustion of the public domain subject to location created an imperative public necessity for the act to take effect on its passage; and the record shows that there was a deficiency in the public domain, August 31, 1882, of 6,136,615 acres.

After August 16, 1876, the railway company constructed its road between San Antonio and El Paso, amounting to 623.14 miles, much the largest portion thereof prior to April 22, 1882. No land certificates were issued or located for the construction of the road between these points. The company contended that by the construction of its road between San Antonio and El Paso it acquired under the act of August 16,

1876, a contract and vested right to sixteen sections of land for each mile of road so constructed; that the issue of certificates had been prevented by the passage of the act of April 22, 1882; and that, consequently, that act impaired the obligation of the contract created by the act of August 16, 1876, and divested the company of its right to lands in contravention of the Constitution of the United States. And further insisted that it was entitled to avail itself in this suit of this alleged unlawful deprivation not merely as a set-off or counter-claim against the State, but as an absolute defence.

The case in this aspect is briefly this: The railway company sought and obtained certificates for building the road from Columbus to San Antonio, and had them located on the lands in question. But at that time the state constitution forbade the granting of lands for railway construction and the issue of certificates therefor, and the State brought suit for the recovery of the lands and the cancellation of the illegally issued muniments of title, which went to a decree in its favor.

The question was as to whether the railroad company was entitled to the particular lands in controversy by virtue of the location thereon of certificates issued for building the road from Columbus to San Antonio. The ruling was that, as the law stood, no title was acquired thereby, and the State was entitled to recover. But it was also contended that no recovery could be had because the company had earned other lands of which it had been, as it alleged, unlawfully deprived.

The Supreme Court of the State held that it was no defence to the suit, by way of set-off, counter-claim, or otherwise, that the company might have been entitled to land certificates for road constructed under the law of 1876, and said that it had "never been ruled that the claimant of land against the State under a location made by virtue of a void certificate has any equity in the premises by reason of being the possessor of another valid certificate."

In arriving at this conclusion the state courts did not determine whether as to those other lands any vested right of the railway company had or had not been impaired or taken

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away; and we cannot hold that the company was denied by the judgment of those courts in this respect any title, right, privilege or immunity secured by the Constitution or laws of the United States.

Judgment affirmed.